



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Bob Wieckowski, Vice Mayor
Anu Natarajan
Bill Harrison
Suzanne Lee Chan

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Melissa Stevenson Dile, Assistant City Manager

Dawn G. Abrahamson, City Clerk
Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Mary Kaye Fisher, Interim Human Resources Dir.
Annabell Holland, Parks & Recreation Dir.
Norm Hughes, City Engineer
Jill Keimach, Community Dev. Director
Bruce Martin, Fire Chief
Jim Pierson, Transportation & Ops Director
Jeff Schwob, Planning Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Lori Taylor, Economic Development Director
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
JUNE 1, 2010
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances*
(This permits reading the title only in lieu of reciting the entire text.)
- 2.2 *Approval of Minutes – None.*
- 2.3 **ANNUAL APPROVAL OF INVESTMENT POLICY**
Annual Delegation of Authority to City Treasurer to Manage Investments, and Annual Approval of Investment Policy

Contact Person:

Name:	<i>Don Dorman</i>	<i>Harriet Commons</i>
Title:	<i>Business Manager</i>	<i>Finance Director/Treasurer</i>
Dept.:	<i>Community Development</i>	<i>Finance</i>
Phone:	<i>510-494-4730</i>	<i>510-284-4010</i>
E-Mail:	<i>ddorman@fremont.gov</i>	<i>hcommons@fremont.gov</i>

RECOMMENDATION: *Adopt a resolution delegating the City Council's authority to invest and reinvest public funds, and to sell or exchange securities so purchased, to the Finance Director/City Treasurer for one year or until earlier revoked by the City Council; and approving the City's investment policy statement for FY 2010/11.*

2.4 **ADDENDUMS TO 2009/10 CONTRACTS FOR AGING AND FAMILY SERVICES**
Authorize the City Manager to Sign Addendums to FY 2009/10 Contracts with the Alameda County Area Agency on Aging for Case Management, Family Caregiver Support and the Senior Center, and to Appropriate Additional Funding

Contact Person:

<i>Name:</i>	<i>Karen Grimsich</i>	<i>Suzanne Shenfil</i>
<i>Title:</i>	<i>AFS Administrator</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Services</i>	<i>Human Services</i>
<i>Phone:</i>	<i>510-574-2062</i>	<i>510-574-2051</i>
<i>E-Mail:</i>	<i>kgrimsich@fremont.gov</i>	<i>sshenfil@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager or designee to execute FY 2009/10 contract amendments with the Area Agency on Aging for case management, caregiver support, and the senior center programs; and appropriate an additional \$3,059 to Fund 106 and \$12,520 to Fund 173.

2.5 **ALCOHOL AND DRUG TESTING CONTRACT**
Approve Agreement with Central Valley Toxicology Inc., for Forensic Toxicology Testing of Blood and Urine for Presence of Alcohol and/or Drugs

Contact Person:

<i>Name:</i>	<i>Thomas Mikkelsen</i>	<i>Craig Steckler</i>
<i>Title:</i>	<i>Lieutenant</i>	<i>Chief of Police</i>
<i>Dept.:</i>	<i>Police</i>	<i>Police</i>
<i>Phone:</i>	<i>510-790-6982</i>	<i>510-790-6810</i>
<i>E-Mail:</i>	<i>tmikkelsen@fremont.gov</i>	<i>csteckler@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager, or his designee, to execute a two-year agreement with Central Valley Toxicology, Inc. (CVT), to provide forensic toxicology testing services for the Police Department. The agreement shall have the option to extend the contract for an addition 12-month period; however, the total compensation to CVT shall not exceed \$200,000 during the life of the agreement.

2.6 **NEW CONTRACT FOR AUTOMATED RED LIGHT ENFORCEMENT PROGRAM**
Public Hearing to Re-Authorize Use of Automated Enforcement Red-light System and Authorize City Manager to Execute Contract with Vendor

Contact Person:

<i>Name:</i>	<i>Tom Mikkelsen</i>	<i>Geneva Bosques</i>
<i>Title:</i>	<i>Lieutenant</i>	<i>Management Analyst II</i>
<i>Dept.:</i>	<i>Police</i>	<i>Police</i>
<i>Phone:</i>	<i>510-790-6982</i>	<i>510-790-6957</i>
<i>E-Mail:</i>	<i>tmikkelsen@fremont.gov</i>	<i>gbosques@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager or his designee to execute a new contract with Redflex Traffic Systems, Inc., to provide maintenance and service for the

existing ten automated enforcement systems and installation of up to five additional new systems to be implemented over the seven-year term of the contract. Authorize the City Manager or his designee to exercise up the three one-year extensions of the contract, subject to satisfactory performance by the vendor.

3. CEREMONIAL ITEMS – None.

4. PUBLIC COMMUNICATIONS

4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS

5.1 PUBLIC HEARING ON THE FY 2010/11 OPERATING BUDGET
First Public Hearing and Council Direction to Staff on the Proposed Fiscal Year 2010/11 Operating Budget

Contact Person:

Name:	Catherine Chevalier	Harriet Commons
Title:	Budget & Operations Manager	Director
Dept.:	Finance	Finance
Phone:	510-494-4615	510-284-4010
E-Mail:	cchevalier@fremont.gov	hcommons@fremont.gov

RECOMMENDATION:

1. Hold a public hearing.
2. Provide direction as needed on issues pertaining to the FY 2010/11 proposed operating budget.

5.2 AFFORDABLE HOUSING ORDINANCE ZONING TEXT AMENDMENT AND AFFORDABLE HOUSING IN-LIEU AND IMPACT FEES (PLN2008-00259)

To Consider a Public Hearing (Published Notice; Display Ad) to Waive First Reading and Introduce an Ordinance to Consider Planning Commission Recommendation to Amend Fremont Municipal Code Title VIII, Chapter 2, Article 21.7, Inclusionary/Affordable Housing, and to Set the Fees Established under the Amended Ordinance by Resolution

Contact Persons:

Name:	Jennifer Brame	Harvey Levine
	Don Dorman	Jill Keimach
Title:	Associate Planner	City Attorney
	Business Manager	Community Development Director
Dept.:	Community Development	City Attorney's Office
		Community Development
Phone:	510-494-4554	510-284-4032
	510-494-4730	510-494-4767
E-Mail:	jbrame@fremont.gov	hlevine@fremont.gov
	ddorman@fremont.gov	jkeimach@fremont.gov

RECOMMENDATION:

1. Hold public hearing.
2. Find that the Negative Declaration (Exhibit "A") prepared for this project has been completed in compliance with the requirements of CEQA and reflects the independent judgment of the City, and that approval of this Zoning Text Amendment and setting of Affordable Housing In-lieu and Impact Fees will not have any significant impact on the environment.
3. Find that the Zoning Text Amendment and setting of Affordable Housing In-lieu and Impact Fees is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the goals, policies, and actions set forth in the General Plan's Housing Chapter as enumerated in Exhibit "C."
4. Find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment because the proposed Zoning Text Amendment and setting of Affordable Housing In-lieu and Impact Fees achieves City housing goals to provide opportunities for housing for all income groups, is consistent with State law, and provides for an economically balanced community as described in the Basis and Purposes section of the proposed ordinance (proposed FMC Title VIII, Chapter 2, Article 21.7, Section 8-22170, Basis and Purposes).
5. Select which, if any, of the following Commission proposed amendments to incorporate into the Affordable Housing Ordinance:
 - a. *Residential Project definition* (Section 8-22171(q))

- i. Applicable to projects with 2 or more net new units or lots, **or**
 - ii. Applicable to projects with 5 or more units or lots.
- b. *Off-Site Construction* (Section 8-22177(b)(1)) *and Purchase of Existing Market Rate Units Requirement* (Section 8-22177(d)(1))
 - i. Units to be converted shall be at least 10% greater in number or provide greater affordability, **or**
 - ii. Units to be converted shall be equivalent to the number resulting from 15% basic requirement.
- c. *Off-Site Construction* (Section 8-22177(b)(2)(b)) *and Purchase of Existing Market Rate Units Locational Criteria* (Section 8-22177(d)(3)(B))
 - i. If not located within a redevelopment area, units to be converted shall either be located within the same Planning Area, the Central Business District, or within 1/2-mile of an existing rail station, **or**
 - ii. If not located within a redevelopment area, units to be converted shall either be located within the same Planning Area, the Central Business District, or within 1-mile of an existing rail station.
- 6. Waive full reading and introduce an Ordinance amending Fremont Municipal Code Title VIII, Chapter 2, by deleting Article 21.7, Inclusionary Housing Ordinance in its entirety, and replacing it with the provisions set forth in Exhibit “B,” Affordable Housing Ordinance.
- 7. Direct the City Clerk to prepare and publish a summary of this ordinance.
- 8. Adopt the resolution as depicted in Exhibit “D” to set the Affordable Housing Fee at \$19.50 per square foot, discounted 25% to \$14.50 for the first year of implementation increasing over the initial three year period to \$19.50 to be effective as of July 1, 2013.
- 9. Rename the City’s “Inclusionary Housing In-Lieu Fund” as the “Affordable Housing Fund,” and direct staff to account for the receipt and use of all affordable housing in-lieu fees and affordable housing impact fees separately within the fund.

6. REPORT FROM CITY ATTORNEY

- 6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS

7.1 AWARD OF TOW SERVICE AGREEMENTS

Award of Tow Service Agreements to Central Towing, All Ways Towing and Transport, and Jack James Towing

Contact Person:

Name:	Mark Riggs	Craig T. Steckler
Title:	Lieutenant	Chief of Police
Dept.:	Police	Police
Phone:	510-790-6913	510-790-6810
E-Mail:	mriggs@fremont.gov	csteckler@fremont.gov

RECOMMENDATION: Authorize the City Manager or designee to negotiate and

execute tow services contracts for a three-year term with All Ways Towing, Jack James Towing and Central Towing.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING

JUNE 1, 2010

***2.3 ANNUAL APPROVAL OF INVESTMENT POLICY**

Annual Delegation of Authority to City Treasurer to Manage Investments, and Annual Approval of Investment Policy

Contact Person:

Name:	Don Dorman	Harriet Commons
Title:	Business Manager	Finance Director/Treasurer
Dept.:	Community Development	Finance
Phone:	510-494-4730	510-284-4010
E-Mail:	ddorman@fremont.gov	hcommons@fremont.gov

Executive Summary: The City Council may elect to delegate its authority to invest and reinvest City funds to the City Treasurer for up to one year pursuant to California Government Code section 53607. Government Code section 53646(a)(2) provides for the City Council's annual consideration of the City's investment policy at a public meeting. The City Council delegated investment authority to the Treasurer and approved the City's investment policy for fiscal year 2009/10 on June 9, 2009. Since then, the Treasurer has applied the policies, practices, and strategies described below to assure daily operational compliance with the investment policy standards.

BACKGROUND: The City Council is expressly authorized to invest and manage the City's public funds by Government Code section 53600.3. Government Code section 53607 authorizes the City Council to delegate its responsibility for conducting investment transactions to the City Treasurer for up to one year. The proposed policy and delegation of authority will be effective starting July 1, 2010, and will continue in effect throughout fiscal year 2010/11 if adopted by the City Council.

DISCUSSION/ANALYSIS: Reviewing the monthly Treasurer's transaction reports ("Treasurer's Report") is one of the activities by which the City Council exercises its ultimate responsibility for the investment function. Each Treasurer's Report describes the portfolio's composition and recent performance, and reports the month's investment transactions. Within each Treasurer's Report, the Treasurer certifies that all investments were made in compliance with the investment policy and that there are adequate funds to pay City obligations for at least six months. The monthly reports also give updates on market conditions and the investment selection plan being used to implement the approved investment policy.

Once adopted by Council, the investment policy sets portfolio management objectives and practices, specifies allowable investment instruments, states the criteria for purchasing those securities, prohibits certain types of security purchases, and fixes the maximum investment horizon (generally five years). The Treasurer uses these guidelines to manage, safeguard and invest all public funds held by the City and the Redevelopment Agency, except for debt proceeds. Debt proceeds are invested in accordance with investment policies approved by the City Council when the debts were first issued. These investment transactions are executed by the trustees of the respective debt issues under the direction of City staff.

Proposed Amended Investment Policy: The proposed investment policy for FY 2010/11 is unchanged from the FY 2009/10 policy.

Investing Policy Implementation: Treasury Division practices are designed, and frequently monitored, to achieve the three key portfolio objectives: (1) safety, and (2) liquidity with (3) optimal portfolio yield. There are risks inherent in fixed income investing, such as market/interest rate risk, credit/default risk, reinvestment risk, and liquidity risk. Other portfolio management risk factors relate to errors, theft, poor judgment, and misappropriation. Treasury Division staff constantly identify, monitor, and manage portfolio risk factors in order to accomplish the portfolio objectives.

The Treasury Division's internal control structure is implemented through written procedures that cover (1) segregating the duties of investing, security custody, and recordkeeping; (2) cross-checking by accounting personnel; (3) reconciling bank and security accounts to the City's books; and (4) regular reporting. The City's independent outside auditors review the City's internal controls, test selected investment transactions and account balances, and report their findings (if any) to the City Council as part of their audit. The Treasurer reviews and ratifies every investment transaction and reviews each monthly Treasurer's Report before it is published.

Market risk, reinvestment risk, and credit risk are reduced, though they cannot be eliminated entirely. Credit risk is managed by only purchasing highly rated securities as permitted under investment policy guidelines. Market, reinvestment and credit risks are all managed by diversifying the portfolio in regards to average maturity, segment composition, issuers, and call structure.

Liquidity risk is managed by maintaining prudent balances in market accounts and in the State of California Local Agency Investment Fund (LAIF – a State-wide investment pool). These are very liquid investments, meaning that they can be accessed on short notice; generally one day or less. Other short-term investments with maturities of less than one year (high-grade commercial paper, bankers acceptances, and U.S. Treasury bills) help the City maintain an adequate liquidity cushion.

Typically, the largest portion of the City's longer-term sub-portfolio is invested in government sponsored enterprise (GSE) notes and bonds. The GSEs are comprised of the Federal Home Loan Bank ("FHLB"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal National Mortgage Association ("Fannie Mae"), and the Federal Farm Credit Bank ("FFCB"). GSE debt is rated Aaa, AAA, and AAA by Moody's, Standard and Poor's, and Fitch, respectively. The City also invests in medium term notes of five years and less issued by major corporations whose debt is rated Aa/AA or better at the time of purchase.

Debt instruments issued by Freddie Mac and Fannie Mae carry the rating agencies' highest Aaa/AAA ratings now only because they are backed by the U.S. Government. The federal government essentially saved them through nationalization in late 2008. Their reserves fell below minimum standards because of the national mortgage crisis. Although the status of Freddie Mac and Fannie Mae remains unchanged (except that their federally funded losses continue to increase), all GSEs currently retain their Aaa/AAA credit ratings. Freddie Mac and Fannie Mae remain central to the federal government's plan to underwrite mortgage assistance to prevent further declines in the national housing markets.

The economic crisis has also caused some of the credit ratings on City-owned corporate notes to be downgraded during the recession. The credit ratings met policy guidelines when the investments were purchased, and all remain rated at least A/a. Rather than sell any investments at a loss, the City continues to hold these investments and monitor their credit status frequently. In particular, the City

holds \$1 million in notes issued by AIG (maturing in November 2011). This corporation suffered a dramatic reversal of its fortunes in September 2008, became largely directly owned by the U.S. government, and has since seen its stock price and profits rebound as it remakes its business. Staff continues to believe it is better to hold this investment to its likely maturity than sell the debt at a substantial loss. In the meantime, these corporate notes are generating relatively high yields and are not subject to being called.

Market Context: All investors, including the City, act within the context of the larger financial markets. These financial markets essentially ceased functioning normally in September and October 2008, when Lehman Brothers literally fell into bankruptcy over the course of a weekend. Several of the largest financial institutions in the world either disappeared into the arms of purchasers (Wachovia Bank, Merrill Lynch, Countrywide Savings), or became wards of the federal government (AIG, Fannie Mae, Freddie Mac), or went out of business (Lehman Brothers, Washington Mutual Bank, Bear Stearns), or required massive infusions of capital from their federal government (Citibank, Bank of America, and national banks in the United Kingdom, Ireland, Iceland, and France).

During fiscal year 2009/10, the financial world was introduced to the PIIGS (Portugal, Ireland, Italy, Greece, and Spain); all sovereign nations that appeared to be on the brink of defaulting on their debt and re-plunging the markets back into roiling turmoil. For now, with the backing of the International Monetary Fund (IMF) and the Euro-zone nations, further crisis has been averted, or at least delayed.

The U.S. Central Bank, the Federal Reserve Bank (the FED), lowered its target federal funds interest rate to a range of 0.00 – 0.25% in late 2008, and has since kept it there. Gross domestic product (GDP) collapsed into negative territory and millions of people lost their jobs as companies slashed payrolls in the fourth quarter of 2008 and the first quarter of 2009. As painful as this deep recession has been in the United States, it has caused even greater havoc to some foreign economies. These events are truly economic shocks of world-wide significance. Although there are nascent signs of recovery in the United States (positive GDP growth occurred in the fourth quarter of 2009 and the first quarter of 2010), it is too early to tell whether underlying weaknesses in the housing market, employment, and the federal government's fiscal health will lead to a second recessionary dip. Alternatively, if the recovery is "real," next year staff may be talking about the high interest rates caused by accelerating inflation. The economic future is murky at best.

Inflation remained tame over the last fiscal year as production capacity was unused and labor markets felt little wage pressure due to the high unemployment rates (at times over 10% nationally and over 12% in California). The U.S. Treasury and the FED continued to prop up the credit and housing markets, and the U.S. Treasury has continued to sell its debt to willing buyers who are looking for the safe haven of the United States government. Interest rates on "safe" investments have been at rock bottom, with the 2-year U.S. Treasury Note yielding well under 1% for most of the fiscal year. LAIF, which reflects a broad range of investments, has seen its yield hover in the 0.52% - 0.58% range for much of the fiscal year.

Portfolio Yield Performance: Yields for both the City portfolio and its benchmarks fell throughout FY 2009/10 (through April 30). The City's average monthly portfolio yield for April 2010 was 1.93%, compared to 2.86% for April 2009. The City's annual cumulative yield through April 2010 is 2.39%

versus 3.36% one year earlier. By comparison, LAIF's daily yield decreased from 1.49% in April 2009 to 0.52% at the end of April 2010.

The City's portfolio was not spared from loss related to economic events. The City held \$2 million of Lehman Brothers commercial paper and \$2 million of their medium term notes when that company filed for bankruptcy in September 2008. The City has written these investments down to zero and recognized a loss pending any potential recovery. The City has taken the following actions in pursuit of recovery: (1) filed its bankruptcy court claim, (2) sued Lehman's accountants, debt underwriters, and corporate leaders in federal court for securities law violations and for making misrepresentations concerning Lehman's financial condition, and (3) joined public entities from across the U.S. who also bought Lehman Brother's debt in efforts to secure reimbursement from the U.S. Treasury's Troubled Asset Recovery Program (TARP). Neither the ultimate success of these efforts, nor the amount of recovery, nor the time until any recovery is received can be accurately assessed.

The dollar-weighted average maturity of the City's portfolio increased from 553 days at the end of April 2009 to 600 days at the end of April 2010. GSE issuers have redeemed their callable bonds before the stated maturity dates at a furious pace throughout the fiscal year. Much of this cash has been held in the money market account (which holds U.S. Treasury bills) and the Local Agency Investment Fund (LAIF) pending clearer market direction.

The Current Plan: Staff uses its investment plan to put the Council adopted investment policy strategies into effect. The plan guides daily purchases and is based on regular evaluations of macro-economic trends and cycles and expectations about future interest rate trends. Staff formulates and updates the plan throughout the year. For example, when rates were relatively high and expected to fall, longer term investments were purchased to lock-in the high rates. Bonds purchased one to four years ago have somewhat slowed the rate of descent of the portfolio's yield.

Presently, rates are very low and are likely to stay in this range for at least the next three to six months with occasional, temporary rate upticks. The City is unable to invest new money it receives (call proceeds, property taxes, etc.) at rates even close to what was available just one year ago. The financial upheaval has reduced the apparent safety of some investment opportunities the City previously used, such as commercial paper issued by larger financial corporations. Staff's current operating plan is to maintain higher than normal liquidity in the money market account (which purchases only the safest of investments: U.S. Treasury-issued notes and bills) and the California Local Agency Investment Fund (LAIF). This extra cash is available for unexpected interruptions to City revenues and to buffer any monies taken by the State of California to handle its budget emergency. The extra cash will be available to purchase higher yielding longer-term investments if and when rates start moving higher. This approach is unchanged from one year ago.

Staff's outlook is for market interest rates to rise slowly over the next several months, with some acceleration in the fall if the Federal Reserve Board raises its interest rates (as staff expects) in September. If the current recovery continues to gain steam, staff's outlook is for interest rates on new purchases towards the end of fiscal year 2010/11 to be considerably higher than today's rates. These higher rates are expected to correlate with anticipated inflation that will be needed by the federal government to "inflate away" some of the massive debt obligations it has assumed during the current recession. LAIF's daily rate is in the 0.5% range now, but is expected by staff to at least double by the

end of next fiscal year. However, continuing slack in the economy could counterbalance the effects of removing the stimulus programs and the expected continuing high national unemployment rates.

Until there is evidence of a real change in economic fundamentals, such as in the unemployment rate, inflation, GDP, and productivity data, staff recommends maintaining higher than normal liquidity levels. Staff will seek to take advantage of any market fluctuations that do occur to buy select investments offering relatively higher interest rates, given these market conditions. LAIF will continue to constitute higher than normal percentages of the portfolio under this plan.

Subject to the City Council's approval of this investment strategy, staff asks the Council to delegate authority to the Finance Director/Treasurer to manage the portfolio in fiscal year 2010/11 in accordance with the Council's long established policy objectives of earning a market-reasonable rate of return within the overriding constraints of portfolio safety and adequate liquidity.

ENCLOSURES:

- [Draft Resolution](#)
- [Exhibit A -- Statement of Investment Policy \(FY 2010/11\)](#)

RECOMMENDATION: Adopt a resolution delegating the City Council's authority to invest and reinvest public funds, and to sell or exchange securities so purchased, to the Finance Director/City Treasurer for one year or until earlier revoked by the City Council; and approving the City's investment policy statement for FY 2010/11.

***2.4 ADDENDUMS TO 2009/10 CONTRACTS FOR AGING AND FAMILY SERVICES**
Authorize the City Manager to Sign Addendums to FY 2009/10 Contracts with the Alameda County Area Agency on Aging for Case Management, Family Caregiver Support and the Senior Center, and to Appropriate Additional Funding

Contact Person:

Name:	Karen Grimsich	Suzanne Shenfil
Title:	AFS Administrator	Director
Dept.:	Human Services	Human Services
Phone:	510-574-2062	510-574-2051
E-Mail:	kgrimsich@fremont.gov	sshenfil@fremont.gov

Executive Summary: The Alameda County Area Agency on Aging (AAA) contracts with the Aging and Family Services Division (AFS) of the Human Services Department, for \$110,425, in support of the Case Management, Family Caregiver Support and the Senior Center programs. This year, AAA has sent the City contract amendments authorizing an additional \$15,579 in one-time-only funding for the current fiscal year. Executing these amendments would increase the total amount of the contracts from \$110,425 to \$126,004. Staff recommends the City Council authorize the City Manager to sign the FY 2009/10 contract amendments and appropriate the additional \$15,579, because the total amount of the City's contracts with Alameda County exceed \$100,000 for this fiscal year.

BACKGROUND: The Alameda County Area Agency on Aging contracts with the City of Fremont Human Services Department for Case Management, Family Caregiver Support and the Senior Center programs. The total value of these contracts is \$110,425. Under the Fremont Municipal Code, the City Manager is authorized to sign contracts only up to \$100,000 per fiscal year per contractor.

DISCUSSION/ANALYSIS:

Case Management Program: AFS has received Older American's Act Funding to provide case management services to Tri-City residents since 1986. The case management program is designed to help frail seniors find the services they need to live safely in their own homes in spite of failing health and shrinking social support. Case managers serve approximately 1,000 seniors and their families each year. They conduct home visits to determine the needs of seniors and develop plans of care that allow seniors to acquire the support needed to function in a community setting and avoid unnecessary use of emergency services and premature institutionalization. This year's contract is for \$30,979. AAA has authorized an additional \$3,059 to this program for the current fiscal year, bringing the total contract amount to \$34,038.

Family Caregiver Support Program: AAA has also awarded AFS funding through the National Family Caregiver Support Program since it became available in 2002. The purpose of the National Family Caregiver Support Program is to fund programs that provide support to the caregiver. The City of Fremont Caregiver Program provides a professional assessment of caregiver needs, individual counseling for caregivers, support groups, and educational workshops, all of which are designed to reduce caregiver burden. The program serves approximately 80 caregivers and care receivers each year. The FY 2009/10 contract is for \$69,446. AAA has authorized an additional \$10,050 to this program for the current fiscal year, bringing the total contract amount to \$79,496.

Senior Center Program: Since 2005, the AAA has provided approximately \$10,000 a year in Older American's Act funding to the Senior Center to support ethnic programming. These funds help sustain senior center operations and are targeted to programs that serve cultural communities. This year's contract is for \$10,000. AAA has authorized an additional \$2,470 to this program for the current fiscal year, bringing the total contract amount to \$12,470.

AAA Amended Contract Amounts

Fund	Contract	Current Contract Amount	Additional Appropriation	Amended Contract Amount
106	Case Management	30,979	3,059	34,038
173	Family Caregiver	69,446	10,050	79,496
	Senior Center	10,000	2,470	12,470
Totals:		\$110,425	\$15,579	\$126,004

FISCAL IMPACT: AAA funding is used to support staffing and other program expenses in the Aging and Family Services Division of the Human Services Department. The additional appropriation will offset costs associated with these programs, such as the cost of office supplies at the Senior Center, program supplies for Family Caregiver events and classes, and client support during the scheduled absence of a case manager.

ENVIRONMENTAL REVIEW: N/A

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or designee to execute FY 2009/10 contract amendments with the Area Agency on Aging for case management, caregiver support, and the senior center programs; and appropriate an additional \$3,059 to Fund 106 and \$12,520 to Fund 173.

***2.5 ALCOHOL AND DRUG TESTING CONTRACT**

Approve Agreement with Central Valley Toxicology Inc., for Forensic Toxicology Testing of Blood and Urine for Presence of Alcohol and/or Drugs

Contact Person:

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Executive Summary: The Police Department contracts with an outside laboratory for forensic toxicology testing services of blood and urine specimens. The testing provides laboratory-certified results for the presence or absence of alcohol and drugs, which are necessary to obtain prosecution of drug and alcohol-related criminal offenses. The Police Department's current forensic toxicology testing agreement expires on June 30, 2010, and a new agreement is necessary in order to ensure continued prosecution of drug and alcohol-related crimes.

BACKGROUND: When a police officer arrests an individual for being under the influence of a controlled substance or driving a motor vehicle while intoxicated, or if it is necessary to conduct a drug panel screen, he/she may obtain a blood or urine sample from the individual. The blood sample is obtained at a local hospital by a certified phlebotomist, and the urine sample can be obtained in our Detention Facility or local hospital. The samples are collected in forensic toxicology-approved specimen collection kits and stored in a secured location in our Detention Facility pending pickup by an approved contractor. The samples are transported by courier to a laboratory where the requested test is performed, and the results are communicated in writing to the Police Department within seven calendar days. Strict evidence chain-of-custody procedures are mandatory, and the laboratory must adhere to the forensic alcohol testing requirements of Title 17 of the California Code of Regulations.

The Police Department does not have the expertise, professional credentials, or ability to perform forensic toxicology testing of blood and urine specimens for criminal prosecution; therefore, the Department is required to contract with a certified and licensed laboratory to conduct these tests. The agreement with the current contractor expires on June 30, 2010, and a new agreement is necessary in order to ensure continued prosecution of drug and alcohol-related crimes.

DISCUSSION/ANALYSIS: The Police Department initiated a Request for Proposals (RFP) for drug and alcohol testing services and opened the proposals on April 15, 2010. Three proposals were submitted for consideration and two, Central Valley Toxicology (CVT) and Forensic Analytical (FA), fulfilled the minimum requirements of the RFP. After reviewing the proposals, Central Valley Toxicology, Inc., was selected. The selection was based on cost per test, screening / confirmation / quantification included in a single fee which allows the Police Department to better estimate the total cost of this contract, and a modest annual savings compared to the current vendor.

Request for Proposal (RFP) Results		
<i>Type of Test</i>	<i>CVT</i>	<i>FA</i>
Alcohol	\$36	\$41
4 Panel blood/urine w/confirmation	\$76	\$78
10+ panel blood w/ one confirmation	\$134	\$118
10+ panel blood w/ two confirmations	\$134	\$162
10+ panel blood w/ three confirmations	\$134	\$206

Central Valley Toxicology has provided forensic toxicology testing services for 24 years and currently provides service to the Alameda County Sheriff's Office, California Highway Patrol, and the City of Albany Police Department.

FISCAL IMPACT: Since the number of required tests can fluctuate month-to-month, it is difficult to estimate the actual fiscal impact of this agreement; however, on average, approximately 765 blood and/or urine tests per year are required. Based on these numbers, the cost of this agreement would be \$56,074 per year, or \$112,148 for the two-year agreement.

<i>Type of Test</i>	<i>Quantity</i>	<i>Cost per Test</i>	<i>Total</i>
Alcohol	230	\$36	\$ 8,280
4 Panel blood/urine	412	\$76	\$31,312
10+ Panel blood/urine	123	\$134	\$16,482
Total	765		\$56,074

Sufficient funding is available in the Police Department's annual operating budget to fund this contract.

ENVIRONMENTAL REVIEW: None.

ENCLOSURE: None.

RECOMMENDATION: Authorize the City Manager, or his designee, to execute a two-year agreement with Central Valley Toxicology, Inc. (CVT), to provide forensic toxicology testing services for the Police Department. The agreement shall have the option to extend the contract for an addition 12-month period; however, the total compensation to CVT shall not exceed \$200,000 during the life of the agreement.

***2.6 NEW CONTRACT FOR AUTOMATED RED LIGHT ENFORCEMENT PROGRAM
Public Hearing to Re-Authorize Use of Automated Enforcement Red-light System and
Authorize City Manager to Execute Contract with Vendor**

Contact Person:

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Executive Summary: In August 1999, the City of Fremont signed a contract with Redflex Traffic Systems, Inc. (RTS), to provide equipment and support services for an automated red-light enforcement program. The goal of the program was to address a 31% increase in red-light-related traffic collisions, while at the same time take advantage of developing technology to enforce red-light violations.

The initial contract with RTS provided the ability for the City to install up to ten automated red-light cameras; however, during the first year of the contract, only three intersections were installed. Since the first installations in 2000, staff has been cautious in the planned expansion of automated red-light intersections in an attempt to address staffing needs and public perception. From 2000 to 2004, six additional intersections were installed. In 2005, the City negotiated a subsequent five-year contract with RTS to provide automated red-light enforcement with an option to add additional intersections. Currently, there are a total of ten intersections throughout the city that are equipped to automatically detect red-light violations. The contract term is seven years, with three one-year extensions, subject to satisfactory performance.

The current contract with RTS is scheduled to expire on June 30, 2010, and staff has negotiated a new contract with RTS. The details of the new contract include a seven-year term, a reduction of over 15% in fees paid to RTS, and a complete replacement and upgrade of cameras, video technology and system-related equipment.

BACKGROUND:

Program Creation: Between 1995 and 1998, the City experienced a 31% increase in red-light-related collisions. To address this concern, the City implemented an Automated Red-light Enforcement Program in August 2000, and contracted with Redflex Traffic Systems, Inc. (RTS), to provide equipment and support services for the program. In the same year, the Police Department added the position of Traffic Project Manager to implement and manage the program. Several years after the implementation of the red-light program, the Traffic Project Manager position was eliminated, and the program was aligned with the Community Engagement Unit, managed by the Community Engagement Manager (MA II). Revenue from the red-light program supports 50% of the Management Analyst II position, 80% of a Community Service Officer, and 100% of a part-time employee.

Over the past ten years, the goal of the program has been to reduce the number of red-light-related collisions while providing a fairly low-cost traffic safety enforcement protection program to residents, commuters, and visitors driving throughout the City. In response to the goal, the program has captured

more than 121,000 red-light incidents and has assisted in reducing the number of red-light-related collisions significantly within the City of Fremont. This fact is significant since these violations originate from controlled signals that represent 5% of the approximately 200 signals within Fremont.

Under the 2005 agreement with RTS, 10 automated enforcement systems are currently installed in locations throughout the City. Staff selected the locations, listed below, based on collision rates, high traffic volume, and citizen and police complaints.

Current Red-light Camera Intersections				
East Mowry at Fremont - Left turns - Straight	East Mowry at Blacow - Straight	West Mowry at Farwell - Straight	South Mission at Mohave - Straight - Right - Left	East Decoto at Paseo Padre - Straight
West Decoto at Fremont - Straight	North Mission at Warm Springs - Straight	East Stevenson at Blacow - Straight - Right	West AutoMall at Grimmer - Straight	West AutoMall at Fremont - Straight - Right

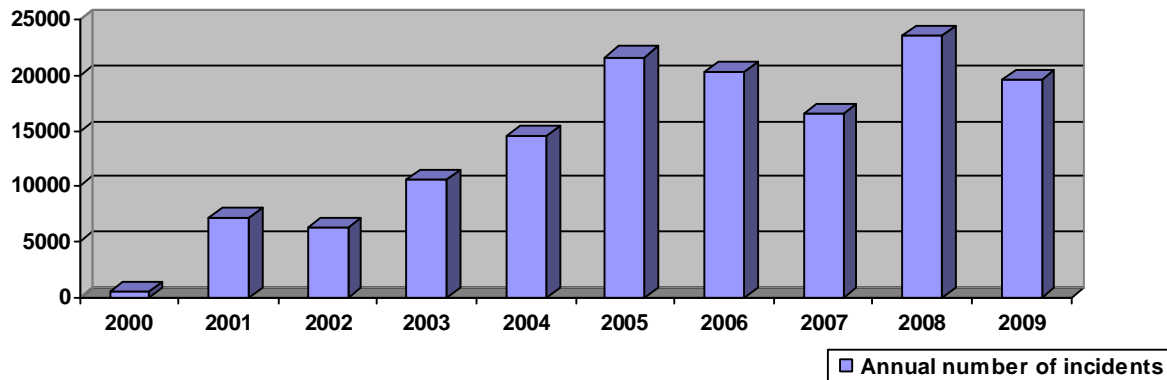
Program Performance: In 2009, the automated enforcement camera systems captured over 19,500 red-light violations, resulting in 10,516 citations being issued. The difference between the number of incidents captured and citations issued is due to “police rejects” (emergency vehicles, funeral processions, obstructed license plates, etc.), camera malfunctions, and weather issues (sun glare). By comparison, during the 2009 calendar year, the total number of non-automated red-light violations viewed and issued by Police Department employees was 319. Due to staffing and safety issues, it is very difficult for police officers to enforce red-light violations. Since implementing the program in 2000, the City has recorded a 40% decrease in traffic-signal-related collisions city-wide. The chart below compares collisions on a city-wide level five years prior to implementing an automated red-light program and the most recent five years with a red-light program.

Collision Statistic Comparison

	Total Collisions	Injury Collisions	Fatal Collisions	Traffic- Signal-Related
07/01/95 – 06/30/00	9155	4601	31	734
01/01/05 – 12/31/09	3899	3233	26	441

When first implemented, it was staff's opinion that the number of citations issued would drop significantly after the first two years due to heightened public awareness; in reality, the number of citations appears to have remained fairly consistent. Staff believes the steady number of citations issued is due to an increase in population, commute patterns, and new automated red-light intersections being installed.

The next chart shows the trend in citations over the first ten years of the program. Citation increases in 2005 and 2008 represent years when the cameras were upgraded with new technology and new intersections were installed.



The ten RTS-equipped intersections detect on average over 1,600 violations per month. Camera systems can capture up to four lanes of contiguous traffic. All ten of the current intersections detect “straight through” violations. In addition, three capture right turns and two capture left turns. The South Mission Boulevard at Mohave Road installation is the only approach that captures all three directions of travel.

Right-turn violations have become a topic of interest over the last several years, especially as more cities establish automated enforcement programs and mandated fees continue to increase. It appears many drivers do not realize they are required to make a full and complete stop prior to making a right turn if the light is red. Many drivers believe that a “Hollywood Stop”, or slowing as they make a right turn, is legal; however, the California Vehicle Code specifically requires a driver to stop before proceeding with a right turn when facing a red signal. It should be noted that the City's RTS system is designed to detect

violators who are travelling at least 12 miles per hour. This is what is called a threshold speed, meaning that the vehicle is going fast enough to assume it will not stop at the limit line. Most of the right-turn violations capture vehicles approaching the intersection at a speed greater than 15 mph. Although these so-called “Hollywood Stops” are illegal, if the vehicle speed is less than the set threshold speed, the system will not capture the violation. In addition, staff reviews all incidents captured to confirm a violation occurred before issuing a citation. In reviewing right-turn violations, staff has observed occasional near collisions between motorists making right turns without stopping and pedestrians and bicyclists attempting to cross the street in a crosswalk.

DISCUSSION/ANALYSIS: RTS currently owns and maintains the existing automated enforcement camera systems at all locations within the City of Fremont. The value of the equipment and infrastructure is estimated to be over \$1 million. RTS also has exclusive knowledge, possession, and ownership of certain equipment, licenses, applications, and citation processes related to the digital red-light photo enforcement cameras and program in Fremont. Maintaining consistency with RTS as the City’s vendor is vital for the on-going success of the program and the ability to continue with an automated red-light program without significant delay and interruption.

At the time the City’s implemented the first agreement, RTS was one of only a few vendors in California providing automated enforcement systems for capturing red-light violations. Over the last several years, many new vendors have entered the automated enforcement business; however, staff estimates it would take at least one year to seek a new vendor, get new equipment and technology in place, and set up a compatible citation-receiving system within the Fremont Superior Court. In addition, the time and costs associated with the City’s Engineering Division to review and approve construction plans and permits is estimated to be \$50,000. The Fremont Superior Court is familiar with the technology and citation-issuing program that RTS uses and has devoted substantial resources to integrate the two systems. The court currently supports seven agencies in Alameda County with automated collection programs that are directly linked to RTS, the only vendor currently accepted by the Court. A change in vendor would significantly disrupt and delay court proceedings. Upon reviewing the services, technology, and time and cost that would be associated with obtaining a new vendor, it is more beneficial for the City to execute a new sole-source contract with the current vendor than to introduce a new vendor into the Alameda Superior Court system.

The Automated Red-light Enforcement Program is governed by California Vehicle Code § 21455.5, 21455.6, 21455.7, and 40520. In January 2004, Assembly Bill 1022 (AB 1022) made significant changes to the Vehicle Code sections regulating automated enforcement red-light systems. One of the most significant statute requirements is that the City Council must conduct a public hearing on the proposed use of an automated enforcement system before authorizing the City Manager to enter into a contract for the use of the system. The legislation states that it is the City’s obligation to maintain overall control and supervision of the program. Staff has always and will continue to do the following:

- Select the specific location of each system in place;
- Regularly inspect and maintain the warning signs at all entrances to the City;
- Oversee the established industry standard of signal phases and timing;
- Complete a 30-day warning period and publicity campaign prior to the addition of any new approach;
- Determine the criteria for screening and issuing violations; and

- Under this new agreement, will continue to maintain control over these specific areas of the program and any new areas that may arise due to future legislative changes to the statute.

The current fine for red-light violations in Alameda County is \$436. Over the last five years, the fine has increased 18%. The fine is set by the State Judicial Council, and the City does not control the State-mandated fee. The fee breakdown for a red-light violation is as follows:

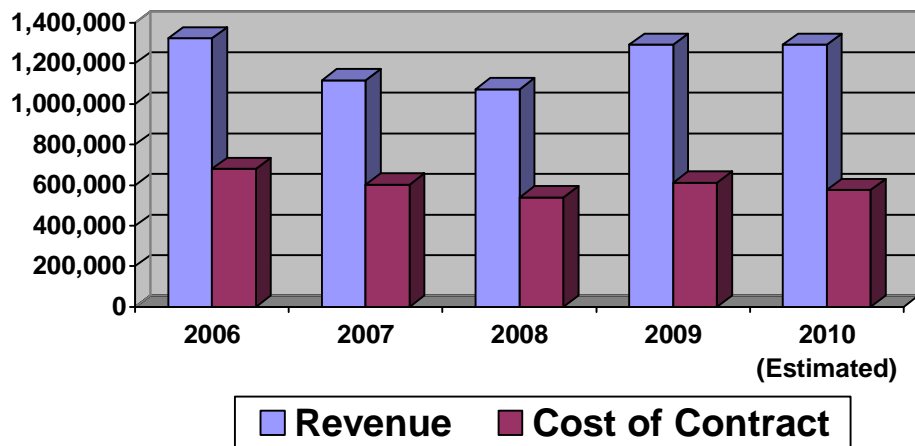
Base Fine	\$100
Penalty Assessment	\$220
State Facility Construction Fund	\$20
Night Court	\$1
DMV	\$10
Criminal Surcharge	\$20
Criminal Conviction Assessment	\$35
<u>Court Security Fee</u>	<u>\$30</u>
Total	\$436

Additional fees are added by the court if the defendant has prior traffic-related convictions or wants to attend traffic school. The City's share for a fully paid citation is \$160.03. State legislation does not give cities the authority to issue civil remedies (municipal code violations) for red-light violations, or any other moving violation, in-lieu of a Vehicle Code violation; therefore, staff cannot re-design the program to reduce fines. While the increased fine has modestly benefited the program financially, staff has seen an increase in the number of court subpoenas requiring a Police Department employee to testify on the citation. On average, staff attends 10-15 traffic court hearings each week, representing about 5% of the total citations issued.

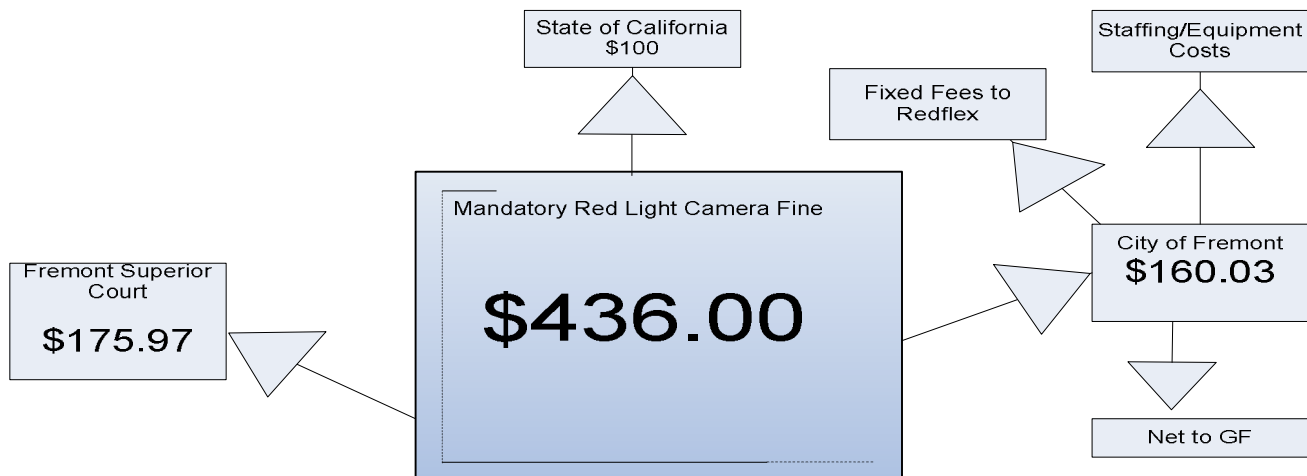
PROPOSED NEW SEVEN-YEAR CONTRACT: Under the proposed agreement, RTS will provide a full-system upgrade and replacement of all video and video-related equipment at the time of renewal, estimated at a value of \$300,000. In addition, the City will have an option to install up to five additional intersection approaches (to be selected by staff) during the term of the agreement. The compensation structure of the new agreement will be similar to the 2005 agreement, but will have substantial savings in the monthly fees. Under the proposed new agreement, the City would pay a fixed fee of \$4,800 per month for each of the existing ten approaches. This new pricing represents a reduction from the current agreement of \$8,622 a month (\$103,464 a year), and approximately \$724,248 over the life of the contract. The monthly fee for any additional approaches would be \$5,870 per approach. The agreement includes an annual CPI increase on the anniversary of the contract (SF-Oakland Bay Area, April to April average) after the first year. The proposed contract would include a termination-for-convenience clause which may be exercised at any time by either party during the term of the contract. In addition, the contract provides for three optional one-year extensions based on satisfactory performance by the vendor.

The following chart represents the comparison of red-light-camera-related fines and the associated fixed costs paid to RTS over the past five years. The reduction of fees in year 2010 is based on the proposed seven-year contract with Redflex, which includes a 15% fee reduction.

Revenue versus Fixed Fees



FISCAL IMPACT: The Automated Red-light Enforcement Program generates adequate fine revenue for the Police Department to support program expenses. The fine for a red-light violation is currently \$436. Of this amount, the City receives \$160.03, the Fremont Superior Court receives and distributes \$175.97, and the State of California receives \$100. If the court reduces the State-mandated fee or allows community service in-lieu of a fee, the City's portion is reduced, or eliminated, accordingly. The distribution of fines is depicted below:



Because the Automated Red-light Enforcement Program is cost-covering, there is no added General Fund burden associated with the contract. In fact, as stated above, there should be a reduction of over \$724,248 in fees paid to RTS over the seven-year term of this contract.

Due to increased workload of maintaining the program, issuing citations, increased number of court subpoenas, responding to citizens' inquiries, and legal challenges, staff is recommending a portion of the anticipated fee savings be used to expand the part-time temporary staff in the program, as well as purchase one-time equipment upgrades. This increase in staffing and equipment will become even more

imperative if there is any desire to expand the program beyond its current status. The cost is estimated to be an additional \$27,000 annually for additional part-time staffing costs. The estimated cost for one-time equipment purchases and upgrades is \$10,000. The requested equipment purchases include a new desk top computer, a lap top computer, and an additional high-speed internet access point. The reduction in fees to RTS will provide enough revenue to pay for the additional staff and equipment costs.

ENVIRONMENTAL REVIEW: None.

ENCLOSURE: None.

RECOMMENDATION: Authorize the City Manager or his designee to execute a new contract with Redflex Traffic Systems, Inc., to provide maintenance and service for the existing ten automated enforcement systems and installation of up to five additional new systems to be implemented over the seven-year term of the contract. Authorize the City Manager or his designee to exercise up the three one-year extensions of the contract, subject to satisfactory performance by the vendor.

5.1 PUBLIC HEARING ON THE FY 2010/11 OPERATING BUDGET

First Public Hearing and Council Direction to Staff on the Proposed Fiscal Year 2010/11 Operating Budget

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Executive Summary: The purpose of this report is to recommend that the City Council hold a public hearing on the FY 2010/11 operating budget. The second public hearing and adoption are scheduled for June 8, 2010.

BACKGROUND: The City Council held a work session on May 18, 2010, to consider the City Manager's proposed budget for fiscal year 2010/11. Following tonight's first public hearing, a second public hearing is scheduled for June 8, 2010. Council may adopt the budget, following the public hearings, on June 8, 2010.

Discussion: The following information is from the Budget Overview section of the proposed budget document. It sets the context for the proposed budget by describing the opportunities and challenges the City will address and the major initiatives underway. It also summarizes the budget strategies proposed for FY 2010/11.

These continue to be unsettled times for the City of Fremont. The prolonged and unusually deep recession gripping the country has reduced both our current revenues and our projected revenues dramatically. California's state budget remains in crisis, and the State's economic recovery is expected to lag the nation. The recent closure of the New United Motor Manufacturing, Inc. (NUMMI) plant will have repercussions that have yet to be quantified, as does the recently announced joint undertaking by Toyota and Tesla at the NUMMI facility. In spite of these significant challenges, City staff has prepared a balanced budget for the City Council's consideration.

The nation continues to struggle in the midst of a severe recession and unprecedented high levels of unemployment. Virtually every major industry has suffered losses. The broadest measure of productivity in the United States, gross domestic product, contracted for four consecutive quarters between the third quarter of 2008 and the second quarter of 2009. Such shrinkage in gross domestic product has not occurred since the late 1970s. But reason for cautious optimism at the national level is starting to emerge. The past three quarters, through the first quarter of 2010, have seen growth ranging from 2.2% to 5.6%. Much of this growth has come from a rebuilding of inventories, and personal consumption of goods and services. As it often does, California led the way into this economic abyss, and recovery here may be slower than in other parts of the country. Unemployment continues to be at an all-time high – and significantly higher than the national unemployment rate. The local situation is exacerbated by the closure of the NUMMI automobile plant on April 1, 2010, which resulted in the loss

of 4,700 jobs locally, and 15,000 jobs in the region. These grim economic shocks have rocked the local economy and, not unexpectedly, they are affecting the City's budget.

Declines in construction and consumer spending have yet again thwarted the State of California's attempt to fashion a sustainable business model. The State is facing yet another budget shortfall due to fundamental problems with the State's budget system. Like many cities in California, Fremont continues to face a volatile and uncertain economic future and remains cautious because of concerns about economic performance and the possibility of more State takeaways of local revenue. There is also a lack of consensus among economists as to whether the recession has ended. According to the UCLA Anderson Forecast a year ago, "2009 is still rather gloomy for the East Bay economy, with the expectation of turnaround at year's end." This year, the UCLA Anderson Forecast states, "Our anticipation of the recovery taking hold and net job gain by the end of the first quarter [of 2010] has not materialized and the East Bay economy, while not stalled, is not moving noticeably either."

At the State level, the UCLA Anderson Forecast notes that, "California's unemployment rate continues to rise, while local governments continue to shed jobs. The outlook for the balance of 2010 is for little or no growth in the State, with the economy picking up speed slightly by the beginning of next year. More normal growth rates for California should be in place by the middle of 2011." In comparison, the State Department of Finance's outlook for the California economy is for modest growth in 2010, followed by moderate growth in 2011 and good growth in 2012. These economic forecasts do not bode well for the revenues of California governments for the coming fiscal year, but do provide a note of very cautious optimism for the following fiscal year.

City finances, and the community services that depend on those resources, are severely strained both by the current recession and by years of State takeaways of traditionally local revenues. The revenue takeaways started in the early 1990s with ongoing shifts of local property taxes to the Education Revenue Augmentation Fund (ERAF). Since then, Fremont has lost over \$157.7 million to ERAF, and this amount continues to grow by roughly \$13.7 million a year. These losses are partially offset by increased Proposition 172 sales tax and COPS funding for law enforcement, resulting in a net annual loss for Fremont of \$12 million and a net cumulative loss for Fremont of \$133.7 million.

The City met previous difficult times by reducing spending throughout the organization and by focusing on attracting and retaining retail businesses to increase revenue. Staff has been vigilant and disciplined over the past several years, reducing staffing to a point of marginal service delivery. Because we were proactive, the City has been able to face yet another economic downturn and the prospect of still more State takeaways with effective options, rather than being forced to merely react. In December 2007, we began a belt-tightening strategy that helped soften the impact of the more significant reductions we had to make in FY 2009/10. A dollar saved today is one we won't have to cut in the future, and the organization has taken that to heart. Even so, some very difficult cuts and service reductions have been necessary to make sure we continue to live within our means.

Total budgeted resources in the coming fiscal year will be adequate to support total budgeted expenditures of \$134.6 million, so the budget is considered to be balanced. The FY 2010/11 budget also maintains the City Council's long-standing funding priorities by allocating over three-quarters of the budget to direct costs for public safety and maintenance. The share of General Fund resources budgeted for these purposes is actually 92% when overhead costs required to support these functions are allocated.

The FY 2010/11 budget continues most of the service reductions implemented since FY 2002/03, and the further reductions made in the FY 2009/10 budget. The FY 2010/11 budget is 0.8% less than last year's adopted budget.

Property tax and sales tax are the City's most significant revenue sources. Despite the decline in other major revenues since the peak year of FY 2000/01, property tax revenues have only recently begun to decline. The City's FY 2010/11 property tax revenues are based on assessed property values as of January 1, 2010. The extremely vigorous real estate market sales activity of the past few years has slowed dramatically in Fremont, resulting in lower property transfer tax revenue. In addition to falling sales prices in FY 2009/10, the County Assessor also experienced significantly increased valuation appeals activity. The focus for appeals for FY 2009/10 was on residential property, while the focus in FY 2010/11 is on non-residential property. The impacts of the NUMMI plant closure likely will not be reflected on the property tax rolls until FY 2011/12, and the effects of the recently announced joint undertaking by Toyota and Tesla at the NUMMI facility are not yet known. Finally, for the first time since the passage of Proposition 13 in 1978, the inflationary adjustment to assessed values permitted by Proposition 13 was a negative 0.27%. Therefore, property tax revenues are projected to decline in FY 2010/11 by 0.9%, to \$61.2 million.

In contrast to the generally consistent property tax trend, sales tax trends are emblematic of the City's broader revenue volatility. After reaching a high point of \$33.2 million in FY 2000/01, sales tax revenues endured a multi-year decline to a low point of \$26.8 million in FY 2003/04. The steep drop was caused by the collapse of the Silicon Valley technology market and Fremont's reliance on sales tax from high-tech manufacturers. Since that time, sales tax from the high-tech and biotech sectors now appears to be stabilizing, and City efforts to diversify and strengthen our sales tax base by increasing the consumer retail sales and auto sales tax bases also have been a big help.

Unfortunately, the consumer spending collapse, fueled by rising unemployment, foreclosed homes, and a sense of consumer panic following the financial market melt-down that occurred in September and October 2008, continues to take a toll on our sales tax revenues. As a result, we expect to see an 18.2% decline in our sales tax revenue in FY 2009/10, followed by a 7.4% increase in FY 2010/11, to \$27.8 million. The wide swings in sales tax are attributable to the "triple flip" portion of our sales tax. In FY 2009/10, the State determined that all cities had received more "triple flip" property tax replacement in the past than they should have, and this overpayment was corrected in FY 2009/10. As a result, both the FY 2009/10 sales tax decline and the FY 2010/11 sales tax increase are overstated. When the "triple flip" portion is omitted from total sales tax, actual sales tax revenue is expected to decrease by 9.4% in FY 2009/10, and increase by 3% in FY 2010/11.

In FY 2009/10, the City is expecting to use \$8.4 million from the Budget Uncertainty Reserve (up from the \$3.6 million anticipated at the time the FY 2009/10 budget was adopted in June 2009). In FY 2010/11, the remaining \$7.7 million of the Budget Uncertainty Reserve will be needed to balance the budget, completely depleting this reserve.

Based on all the data we have at this time and economic forecasts from a range of sources, we are making the following key assumptions for the FY 2010/11 budget:

1. Because we continue to see mixed signals about the timing of economic recovery, a combination of one-time budget reductions and deferrals is proposed as a bridging strategy in FY 2010/11, resulting in a budget that is only 1.9% more than estimated actual expenditures the year before. When compared to the FY 2009/10 adopted budget, there is actually an expenditure decrease of 0.8%.
2. The local economy will generally hold steady during FY 2010/11, resulting in total General Fund resources (revenues and transfers in) increasing by 2.4% over estimated actual resources in FY 2009/10. This is in contrast to the more typical growth experienced in prior years of at least 4%.
3. After a review of capital projects, \$2.3 million was identified for projects that can be deferred to a later date. This amount will be transferred to the Budget Uncertainty Reserve, bringing the balance of this Reserve to \$7.7 million, and all of it is anticipated to be used to balance the FY 2010/11 budget.
4. The costs of the FY 2010/11 budget will exceed projected resources, requiring the use of the remainder of the City's Budget Uncertainty Reserve to balance the budget.
5. Recent economic reports have been erratic and contradictory, and the unresolved State budget situation continues to be a threat, which means that this budget may be considered "provisional" in nature, with additional modifications perhaps needed during FY 2010/11.
6. No specific provision is made for future State takeaways in the proposed budget. However, the City will be ready to respond to any such occurrences confirmed by State legislative action when the amount and timing are known, and we will return to Council as needed.
7. Total expenditures in the FY 2010/11 budget include a savings assumption of \$1.5 million (approximately 1% of total budgeted expenditures and transfers out in FY 2010/11) to compensate for the historical tendency to under-spend total resources allocated.
8. The FY 2010/11 budget does not include any prefunding of the City's other post-employment benefit (OPEB) liabilities, nor does it include any contribution to capital projects. Funding for these items will not be included in the budget until such time as the economic situation has stabilized and sufficient resources are once again available.
9. The General Fund's primary reserves, which total 12.5% of total expenditures and transfers out, will remain intact for FY 2010/11. However, \$7.7 million from the Budget Uncertainty Reserve will be spent, with the result that this reserve will be totally depleted at the end of FY 2010/11.

Impact of State's Financial Condition: The instability of the State budget continues to be a real threat to local governments, including Fremont. Proposition 1A of 2004 provides that the State can borrow 8% of local property taxes no more frequently than twice every 10 years, and the second time only if the first borrowing has been repaid. Each borrowing must be repaid within three years, with interest. The 8% amount is actually measured at the county level, and may be distributed among local agencies in any manner, so long as the total 8% at the countywide level is remitted to the State. That allocation methodology is determined at the time of each borrowing. As a result, Fremont's share could actually be more or less than 8%.

In FY 2009/10, the State declared "significant financial hardship" and borrowed 8% of property tax revenues from cities, counties and special districts. For Fremont, the amount of this loan was \$5.6 million, to be repaid with 2% simple interest by no later than June 30, 2013. In October 2009, the City Council approved Fremont's participation in the Property Tax Securitization Program offered by the California Statewide Communities Development Authority (CSCDA). As part of this program, the City signed over its property tax receivable to CSCDA, which in turn used those receivables from a number of local agencies to secure bonds it sold in November 2009. The proceeds of the bonds were disbursed

to participating local agencies to coincide with property tax payment dates by the counties. By no later than June 30, 2013, the State will repay its loans to CSCDA, rather than to the local agencies participating in the securitization program, for disbursement to the bondholders. The State cannot invoke the provisions of Proposition 1A again until FY 2013/14.

In late February 2009, the State adopted a revised FY 2008/09 budget and a budget for FY 2009/10. The relative value of the package of solutions for the 18-month period ending June 30, 2010, is as follows:

Tax increase and other revenues	\$12.7 billion
Spending reductions and fund shifts	22.6 billion
Borrowing	<u>5.4 billion</u>
Value of total package	\$40.7 billion

Among the tax increases are a 1% increase in sales tax through FY 2011/12, an increase in the vehicle license fee (VLF) to 1% through FY 2011/12, and a further increase in the VLF of 0.15% for local public safety programs through FY 2010/11.

Even with the adoption of the FY 2009/10 budget package, the State still faces roughly \$20 billion in annual budget shortfalls in the coming years, for a number of reasons. First, the State's economic recovery from the recession is expected to be relatively slow. In addition, many of the solutions adopted as part of the FY 2009/10 budget are short-term in nature – meaning they will not help balance the budget in future years. Consequently, based on current projections, the State will need to adopt billions of dollars in additional spending reductions, tax increases, or other solutions in the coming years. Any budget proposal requires a two-thirds vote of both houses of the State Legislature and the Governor's signature in order to take effect.

On May 14, 2010, the Governor issued his revised budget proposal (often referred to as the "May Revise"). Because of continuing revenue shortfalls and expenditure savings that have not materialized, the State expects to have a \$19.1 billion deficit to resolve. The "May Revise" includes \$19.1 billion of solutions. Program spending reductions make up two-thirds of the solutions proposed by the Governor, including significant reductions in social services programs. The balance is made up of federal assistance, borrowing and funding shifts, and new revenues. The Legislature's initial reaction to this proposal has not been positive.

One additional worrisome possibility is that of additional "takes" from redevelopment agencies. Although the initial attempt, as part of the State's FY 2008/09 budget, was ruled unconstitutional by the courts, the Legislature was not deterred and made another attempt in FY 2009/10, with changes intended to correct the constitutional flaws in the first attempt.

The California Redevelopment Association (CRA) again challenged the State's attempt to take revenues from redevelopment agencies in FY 2009/10. However, this time the ruling was in the State's favor. Although an appeal has been filed, the FY 2009/10 payment must be made. The Fremont Redevelopment Agency made its \$10.9 million payment on time and under protest, pending the outcome of the appeal. A second payment of \$2.3 million will be due in FY 2010/11. Given the State's initial survival of the legal challenge of this budget-balancing tactic, cities and redevelopment agencies are

justifiably concerned that additional “takes” may be on the horizon. We concur with CRA Executive Director John Shirey’s comment that “siphoning redevelopment funds away in this tough economy is short-sighted and bad policy. Redevelopment stimulates billions of dollars in economic activity and supports thousands of jobs, which is exactly what we need right now to boost California’s sagging economy.”

State constitutional provisions and State laws approved by the voters limit the State’s budget flexibility in solving structural deficits. Voters have “locked in” an increasing share of budgeted expenditures without increasing revenues. Such voter-approved funding commitments are often contradictory but, even worse, they reduce the State’s flexibility needed to deal with changing budget circumstances. All of these factors, combined with the need for a two-thirds vote in each house of the Legislature to approve a budget, make it especially difficult for the Governor and the Legislature to reach agreement on the State’s budget.

Operational Impacts and Challenges: As the depth and nature of the current crisis have become clearer, the City began the process of significantly re-evaluating the services provided to the community. City services are provided by employees, and financial instability impacts City staff. Several years ago, the City cut costs by more than 25% and reduced staff by more than 220 positions (144.78 full-time equivalent positions [FTEs] held by 165 people, plus 59 temporary workers). These severe reductions in FY 2002/03 created critical public safety and maintenance issues and have hampered our ability to provide optimal administrative support to frontline operations.

The prolonged recession and continuing concern about how the State will deal with its own budget gap mean that we do not have the resources to staff all of our remaining authorized positions throughout the City. Eleven vacant positions in several departments were frozen in FY 2007/08, and those positions were subsequently permanently eliminated in the FY 2009/10 budget. In addition, all departments were directed to reduce their budgets by 1% in December 2007, and that savings target was carried forward and made permanent in the FY 2009/10 operating budget.

As the global financial crisis unfolded in FY 2008/09, it became increasingly apparent that more drastic budget reductions would be needed in order to live within our means. To that end, public safety departments were asked to reduce their budgets by 5% and all other departments were asked to make 10% reductions. Because of declining development activity, Community Development took a reduction of 20% in costs funded by developer fees.

These budget reductions resulted in additional staffing reductions in FY 2009/10. The total authorized staffing citywide decreased from 919.975 FTEs in FY 2008/09 to 846.000 FTEs in FY 2009/10, a decrease of 73.975 FTEs (8%), in addition to the elimination of 29 temporary workers. These position reductions affected all City departments. Regular staffing is down 18% since FY 2002/03, and temporary staffing has been reduced significantly, as well. Although these actions were necessary to help balance the budget, staffing levels for the most basic services – public safety and maintenance – are at their lowest level in almost 20 years when viewed in relation to Fremont’s population. The total City workforce now consists of 3.9 FTEs per 1,000 residents, one of the lowest staffing levels in Alameda County.

We believe the reductions made in FY 2009/10 have shrunk the organization to a sustainable level. However, because of the erratic and often contradictory economic news, it now appears that some additional reductions are necessary for FY 2010/11. We are proposing a balanced combination of a variety of one-time bridging strategies for the fiscal year.

In addition to the staffing reductions already implemented, we will freeze and not fund five additional positions, resulting in \$700,000 of anticipated savings. General Fund contributions to the Development and Recreation cost centers will be reduced by \$300,000 each, and fund balance in the amount of \$300,000 each will be transferred in from the Information Technology Services fund and the Vehicle Replacement fund. A review of capital projects resulted in the identification of \$2.3 million in projects that can be deferred to a future date, and this money will be transferred into the Budget Uncertainty Reserve, for use in balancing the FY 2010/11 budget. Finally, there is \$1.8 million in budget balancing strategies that have not yet been identified. This will be a priority, as we head into FY 2010/11, to identify and implement these additional strategies. All of these items take a toll on the organization and our ability to provide services internally and to the community. However, they also result in a balanced budget for FY 2010/11.

This level of budget reductions will continue to have a noticeable impact on the community. There are some services we simply will not be able to provide. During FY 2009/10, the organization increased its focus on “resetting” services and service levels, rather than trying to hold on until such time as services can be restored. Local government everywhere is faced with a new reality in the face of shrunken resources. We are no longer doing more with less; we are doing less with less! It is essential that we reset our expectations about types of services we will provide, service levels, and priorities. This will be an ongoing effort for the foreseeable future.

Even as we struggle to provide services to the community, we face another challenge in the increasing cost of maintaining Fremont’s infrastructure. This is primarily due to three factors. First, as Fremont ages, so does its public infrastructure. The majority of Fremont’s public infrastructure was constructed many years ago and now requires either an increased level or frequency of repairs, compounded by not having had adequate resources to spend on street maintenance in the past. Second, as Fremont continues to grow, additional infrastructure is added that must be maintained, further stretching the City’s limited maintenance resources. Finally, new requirements result in increased costs. Some of these requirements are voluntary, such as the City’s continued move toward greater sustainability. Although sustainability programs such as improved energy efficiency will eventually save money and reduce greenhouse gas emissions, in the near term there are increased transitional costs. Other maintenance requirements, which are regulatory in nature, have increased dramatically over the last few years, and have added significant costs to City operations.

Major City Initiatives: Although the City’s current economic climate is grim, affecting the breadth and depth of services offered to the community, there are many important initiatives currently underway. These initiatives are important investments in the community’s future and position the City well for long-term growth and stability. Notwithstanding the impacts of budget reductions, City staff must continue to proactively move these important initiatives forward.

Development: There are a number of significant development projects and initiatives underway. These are all important elements of our sales tax diversification strategy.

NUMMI Site Reuse and Revitalization: The closure of the NUMMI automobile plant has presented challenges and created opportunities for both Fremont and the region. In order to develop a strategy for the NUMMI site and surrounding areas, the City applied for and received a \$333,000 grant from the United States Economic Development Administration (EDA). These grant funds will be used to complete a series of four studies to develop a strategic plan for the reuse and revitalization of the NUMMI site. These studies are still expected to be conducted in FY 2010/11, although the scope of work may be modified in light of the recent announcement by Toyota and Tesla.

The studies will focus on the Warm Springs/South Fremont area of over 850 acres that surrounds the future Warm Springs BART station and includes the NUMMI site. In addition to these studies, the City has applied for a Priority Development Area designation from the Association of Bay Area Governments. The strategic location of this area with convenient Interstate freeway access, rail access, and public transit (via the future Warm Springs BART station and bus service) present an unparalleled opportunity for economic development and new jobs in the Bay Area. The studies are expected to be complete in early 2011, and the results will be integrated into a Specific or Community Plan, as well as the new General Plan.

Midtown/Capitol Avenue: The Midtown/Capitol Avenue project is a “Main Street” style pedestrian-oriented mixed-use development focused in the area bounded by Fremont Boulevard, Mowry Avenue, Paseo Padre Parkway, and Walnut Avenue. In August 2008, the City entered into a Memorandum of Understanding (MOU) with TMG Partners for planning and development. Staff is currently working with TMG Partners on the development of a Specific Plan/Precise Plan for the Midtown District and associated environmental review. When completed, these documents will provide certainty for developers as to the type of project that can be developed and will help expedite the approval process, saving both time and money.

Retail Centers: Pacific Commons is an 880,000 square-foot retail center located at I-880 and Auto Mall Parkway. It is anticipated that re-tenanting of existing vacant spaces and a potential proposal to expand the Center with a new “big box” anchor and a 16-screen movie theater will be the focus of attention in FY 2010/11. In addition to efforts at Pacific Commons, the City will continue its efforts to find tenants for existing retail vacancies throughout Fremont.

Emerging Technology: Fremont’s emerging “clean and green” technology cluster is expanding, most notably with the new construction of the Solyndra manufacturing plant. Currently, over 300,000 square feet of new specialized manufacturing space is being developed, and a second phase is planned to begin construction next fiscal year. Other solar and clean technology firms have been leasing space in Fremont and planning expansions. Fremont’s biotech and medical device industry cluster has been stable, with firms continuing to make investments in their facilities. Staff seeks opportunities and continues to meet with potential businesses and market local sites. The establishment of these various technology clusters promotes business-to-business opportunities, helping employment and the City’s sales tax revenues.

Local Business Stimulus Package: The City will continue to market the measures included in the March 2009 Local Business Stimulus Package designed to help existing Fremont businesses and provide incentives to attract new businesses to Fremont during these difficult economic times. The measures in the Local Business Stimulus Package include the following:

- Reduce Development Impact Fees citywide by 10% until December 31, 2011, by collecting 90% of the fee during this time.
- Reduce Development Impact Fees by 25% within the Central Business District (CBD) until December 31, 2011, by collecting 75% of the fee during this time.
- Change the current practice of collecting Development Impact Fees at time of building permit issuance to collecting fees prior to final inspection or granting of Certificate of Occupancy.
- Exempt clean technology firms from the Business License Tax for up to five years.
- Increase the local business purchasing preference from 2.5% to 5% until December 31, 2010.
- Authorize the City to participate in the Statewide Community Infrastructure Program in order to offer developers an alternative financing program to pay Development Impact Fees.
- Assist qualifying local businesses with creating a Foreign Trade Zone.

In addition, there are a number of other ongoing Economic Development, Redevelopment Agency, and Planning Division activities that will be retooled and/or introduced in the upcoming year as part of the City's concerted effort to provide additional assistance for local businesses. These activities include the following:

- The City's "Shop Fremont" campaign.
- The Redevelopment Agency's Commercial Rehabilitation Loan Program.
- Partnering with local educational institutions and employment agencies to promote small business workshops, job training and employment resources.
- Providing additional promotion of Employment Training Panel funds and Industrial Development Bonds for qualifying businesses.
- Updating the Sign Ordinance to allow more leeway and flexibility for business promotion.

City staff was recognized on March 26, 2010, by the Fremont Chamber of Commerce for being "business friendly" based on efficiency improvements and local stimulus programs that have assisted development during this economic downturn.

Federal Economic Stimulus: President Barack Obama signed the \$787 billion American Recovery and Reinvestment Act (ARRA) of 2009 into law on February 17, 2009. The American Recovery and Reinvestment Act of 2009 is also commonly known as the Federal Stimulus Package. The main objectives of the Federal Stimulus Package are to create jobs and stabilize the economy. ARRA funding is targeted to programs in the areas of health care, energy, infrastructure, education, public safety, transportation, environment, affordable housing, and economic development. Significant ARRA funding awards to date include the following:

- Fremont has received \$4.01 million in new funding plus an additional \$1.9 million through a Fund Exchange Agreement with the Alameda County Congestion Management Agency for street overlays, and \$770,000 for pavement rehabilitation on Osgood Road.
- As part of a coordinated County-wide effort, the City is actively implementing a \$1.2 million Homeless Prevention and Rapid Rehousing program designed to help families facing housing crises and those who have recently become homeless. The program is funded through ARRA, with matching Temporary Assistance for Needy Families (TANF) funds through the Alameda County Social Services Agency. Services are being delivered at the Family Resource Center, in partnership with Abode Services, a local non-profit agency.

- Approximately \$330,000 in CDBG-R funds is being used to make renovations at the Family Resource Center and reconstruct the parking lot to meet ADA standards, thus providing jobs for workers in the construction industry. The City also partnered with Alameda County and other local jurisdictions to successfully receive approximately \$13 million in Neighborhood Stabilization Program (I and II) funds to be used to purchase and renovate foreclosed homes and turn them into affordable housing units.
- The City received an allocation of \$4,456,000 in Recovery Zone Facility Bonds (RZFB) for areas the City designates as “recovery zones.” This financing tool allows smaller businesses to finance projects that create jobs and investment within communities. After a formal application and review process, the expansion project for Dale Hardware, a long-time local business, was selected to receive Fremont’s allocation to finance the construction of a 56,000 square foot expansion of its existing hardware and building supply facility.
- Fremont received \$1.89 million for energy efficiency and conservation. The funds are being used for several different projects, including installation of a new “cool” roof at the Fremont Main Library (the building is owned by the City), and a pilot program for installing high-efficiency streetlights. Preliminary work took place in FY 2009/10, and the bulk of construction/installation will occur in FY 2010/11.

General Plan Update: State law requires cities to adopt a comprehensive General Plan, which serves as the “constitution” for all future development decisions in the community. In FY 2007/08, the City began working on an update to its General Plan, which was last comprehensively rewritten in 1991. As part of that effort, staff sought extensive community input, completed several technical studies, and held a series of study sessions with the City Council and the Planning Commission on land use policy issues. In FY 2009/10, the Planning Commission and City Council continued to provide policy direction and establish the vision for the City’s future, and staff is using that information in drafting the General Plan, for consideration and final adoption by the City Council in FY 2010/11.

Redevelopment: Several exciting redevelopment projects are underway. All of these projects will help to revitalize the Redevelopment Project Areas and bring new revenue into Fremont.

Centerville: One of the largest projects underway in the Centerville district is the Agency-owned Centerville Unified Site, located on a 6.6-acre site along Fremont Boulevard near Thornton Avenue. The Agency has selected a developer for the site, is negotiating a disposition and development agreement, and anticipates commencing the entitlement process for a new development. This development will be a public/private partnership between the selected developer and the Redevelopment Agency, focused on creating a mix of uses and featuring architectural design consistent with the character of Centerville.

Irvington: The Bay Street Streetscape and Parking Project is one of the cornerstones for Irvington’s revitalization. The project was initiated to transform the street environment for this three-block stretch of Bay Street to support existing, and create new, commercial and residential mixed uses, as well as to encourage other public and private investments in and around the Five Corners area in Irvington. Construction of the parking lot was completed in spring 2008 and undergrounding of the overhead utilities was completed in 2009. The streetscape work is now underway and scheduled to be completed in fall 2010.

The Grimmer Greenbelt Gateway project will create a meandering landscaped pedestrian and bicycle path from Fremont Boulevard across Paseo Padre Parkway and into Central Park. The first phase of this project, reconstruction of the Paseo Padre Parkway/Grimmer Boulevard intersection, is underway and should be completed this summer. Development of the preliminary design and cost estimates for the next phase will occur in FY 2010/11.

Niles: In conjunction with the redevelopment of the former Union Pacific (UP) property and its environs, the Redevelopment Agency will continue the design and development of a pedestrian link connecting the former UP property and Niles historic commercial core to the more visible Niles Canyon Railway passenger boarding/disembarkation platform and Mission Boulevard. The first step in this project is to identify the optimal location and type (e.g., pedestrian bridge, at-grade railroad crossing) of connection and determine the cost of construction. The next phase of work is to complete environmental remediation of the remaining portion of the UP site in preparation for future redevelopment.

Capital Projects: Despite the challenges in the City's General Fund, we continue to work on a variety of major capital projects. These projects can proceed because, for the most part, they do not rely on the City's General Fund. Rather, their funding comes from such sources as redevelopment tax increment, traffic impact fees, State and regional sources, and the Fire Safety Bond (Measure R) approved by Fremont voters in 2002.

Pavement Overlay Project: Last summer, the City of Fremont used \$4.01 million of American Recovery and Reinvestment Act (ARRA) funds, supplemented with an additional \$1.9 million of ARRA funds through a Fund Exchange Agreement with the Alameda County Congestion Management Agency (CMA), to rehabilitate 13 street segments of arterials and collectors, for a total length of 4.3 road miles.

This year, the City will rehabilitate 11 street segments of arterials and collectors, for a total length of 4 road miles. Segments will include portions of Paseo Padre Parkway, Stevenson Boulevard, Mowry Avenue, and Thornton Avenue. This \$5.2 million project will be funded through Proposition 1B and other local funds, and construction is expected to start this summer and be completed this fall.

Osgood Road Widening: This summer, the City will widen and repave Osgood Road between Washington Boulevard and Auto Mall Parkway, using \$770,000 of ARRA funds, \$1.4 million of federal transportation funds, and traffic impact fees.

Fire Safety Bond Projects: In November 2002, Fremont voters approved Measure R by 74.4%, thereby authorizing the City to issue \$51 million in general obligation bonds, to be repaid by a property tax levy. Proceeds from these bonds are to be used to replace three fire stations, build public safety training facilities, and make remodeling and seismic improvements to seven existing fire stations. To date, all \$51 million in bonds has been issued, and new Station 8 in North Fremont, Station 6 in Centerville, and Station 2 in Niles have been completed.

Of the stations being remodeled, six are complete (Station 1 in the Central Business District, Station 4 at Pine Street and Paseo Padre Parkway, Station 5 in Warm Springs, Station 7 at Grimmer Boulevard and Auto Mall Parkway, Station 9 at Stevenson Place, and Station 10 in Ardenwood). The remodel of Station 3 in Irvington, which is the last fire station project, began construction this spring. The

separate public safety training facilities consist of a Police firing range and training room, Fire training classrooms, and a Fire tactical training facility. The Fire training classrooms, which were part of the Building A Fire Administration project (funded with non-fire bond money), were completed in April 2009. The Fire tactical training facility began construction in May 2009 and will be completed in June 2010. The Police firing range began construction in April 2009 and is scheduled to be complete in mid-2010.

Parks and Recreation: Several projects are underway or about to begin that enhance the lives of our citizens, increase safety and park usability, and reduce maintenance costs.

Playgrounds: As part of a multi-year effort to bring City playgrounds into compliance with current playground safety standards and minimize maintenance costs, 12 playgrounds are currently being reconstructed. In FY 2010/11, the remaining six playgrounds will be completed. The sand or fibar surfaces at these playgrounds are being replaced with poured-in-place rubber, which is projected to reduce the number of hours necessary to maintain these playgrounds by 800 per year.

Conclusion: Fremont has long prided itself on being a lean organization, making the most of the resources entrusted to us. The prolonged recession has forced us to make hard choices about which services we will provide to the community, and how we will provide them. Fiscal discipline and wise stewardship over many years have made it possible for us to take a balanced approach as we strategically reset our service levels. I would like to thank both the City Council and City staff for the strong partnership that has enabled us to effectively meet the challenges we face.

ENCLOSURE: None

RECOMMENDATION:

1. Hold a public hearing.
2. Provide direction as needed on issues pertaining to the FY 2010/11 proposed operating budget.

5.2 AFFORDABLE HOUSING ORDINANCE ZONING TEXT AMENDMENT AND AFFORDABLE HOUSING IN-LIEU AND IMPACT FEES (PLN2008-00259)

To Consider a Public Hearing (Published Notice; Display Ad) to Waive First Reading and Introduce an Ordinance to Consider Planning Commission Recommendation to Amend Fremont Municipal Code Title VIII, Chapter 2, Article 21.7, Inclusionary/Affordable Housing, and to Set the Fees Established under the Amended Ordinance by Resolution

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Executive Summary:

The proposed Zoning Text Amendment to the Inclusionary/Affordable Housing Ordinance and the accompanying resolution to set fees reflect multiple priorities that have been articulated by the City Council for several years. In addition to continuing the Council's recent efforts to stimulate Fremont's local economy during the current national recession, the proposed amendments are also aimed at furthering the Council's longstanding objective of maintaining balanced housing opportunities among all income groups living within the City.

The proposed ordinance and accompanying resolution are the results of multiple meetings with a stakeholders group. Currently, the basic requirement of each residential project with seven or more units is to reserve 15% of the units as affordable housing. The proposed ordinance provides several options to meet this obligation, including allowing all residential projects the option of paying a fee in-lieu of constructing the units on-site. The fees collected will be deposited in the Affordable Housing Fund as a resource for creating a broad range of affordable housing opportunities.

On April 22, 2010, the Planning Commission hosted a work session and on May 13, 2010, conducted a public hearing on the proposed modifications to the Inclusionary/Affordable Housing Ordinance. The Planning Commission voted to recommend that Council approve the proposed Zoning Text Amendment to modify the Inclusionary/Affordable Housing ordinance with a vote of 4-2-0-1, subject to amendments described in this report.

BACKGROUND:

Consistent with its support of policies aimed at attaining decent housing and a suitable living environment for every Fremont resident, the City Council initially adopted the Inclusionary Housing Ordinance in 2002. Since then, the City has continued to study the issues surrounding affordable housing and to investigate approaches to optimize the beneficial affects of the City's program on

housing for people whose incomes are below the area's median income. The demand for affordable housing created by new development, and the influences of high land and construction costs on the production of affordable housing are among the issues considered by the Council. Since the adoption of the City's first Inclusionary Housing Ordinance, 186 housing units for moderate income household have been constructed and restricted on-site with another 167 entitled. Concurrently, the Office of Housing and Redevelopment has used its set-aside Affordable Housing funds to partner with affordable housing developers to produce 197 low, 201 very low, and 58 extremely low housing units.

In early 2008, City Council discussed housing needs and directed staff to evaluate the Inclusionary Housing Ordinance and come back with recommended revisions to better meet the City's housing needs. The Council's early direction was to provide for the option of an in-lieu fee; increase the percentage of inclusionary units over a five year period; allow the transfer of affordable units from on-site to another site; and allow a portion of the Housing Fund monies to be used for supportive services. In response, staff met several times with a housing stakeholders group comprised of for-profit housing developers, non-profit affordable housing developers, and housing advocates to identify potential concepts to modify the Inclusionary Housing Ordinance. From these discussions with the stakeholders group, the following list was established identifying the combined goals of the interest groups for incorporation/revision to the Inclusionary Housing Ordinance.

Goals for Affordable Housing Ordinance

- Encourage the full range of affordable housing, dispersed throughout the City
 - Create housing opportunities for all income levels
 - Disperse housing throughout the City
 - Provide deeper/greater affordability
 - Ensure that the fees collected are sufficient to produce the same or greater number of affordable units through partnerships with housing developers
- Provide clarity and flexibility to meet obligation
 - Create clear development expectations and costs
 - Produce affordable units in a timely manner
 - Allow a variety of options to meet affordability obligations
 - Allow for collection of fees while balancing the desire to deepen the affordability
- Legal defensibility
 - Create a legally defensible analysis that forms a basis for the policy level discussions
- Supportive services
 - Allow a portion of Affordable Housing Fund monies to be used for supportive services
- Respond to the changing economic, development, and affordable housing conditions
 - Create incentives to stimulate construction, especially during current downturn
 - Monitor and revise fees and policies on a regular basis

Palmer and Patterson Cases

As staff conducted additional stakeholder meetings and worked through the proposed ordinance changes consistent with Council direction, two California appellate court cases were published in 2009 which

compelled a review of inclusionary housing legislation by all California cities. The first case involved a lawsuit filed by the Building Industry Association of Central California against the City of Patterson (*Patterson*) that challenged how that city applied and calculated an affordable housing in-lieu fee that had been provided for in a development agreement. The *Patterson* court analyzed the in-lieu fee as an impact fee rather than as the cash-equivalent of satisfying a land use regulation (a traditional police power regulatory standard), and applied legal principles applicable to impact fees in reaching its conclusion that the city had not shown a reasonable relationship between the amount of the fee and the impact of the project at issue in the case. The decision in *Patterson* creates uncertainty in inclusionary housing jurisprudence, which suggests that preparation of a traditional impact fee nexus study in setting inclusionary in-lieu fees is advisable. The second lawsuit, filed by developer Geoffrey Palmer against the City of Los Angeles (*Palmer*), challenged Los Angeles's affordable housing ordinance as it applied to development of market-rate rental housing units. The *Palmer* court held that Los Angeles was prohibited by State law (the Costa-Hawkins Rental Housing Act) from requiring a developer to set aside affordable units in market-rate rental projects not receiving, or requesting, any City assistance. The *Palmer* court also did not permit in-lieu fees to be charge to rental housing because the fees were based on the provision of rental housing on-site, which was not permitted. Instead, only rental housing impact fees may be charged.

As a result of these two cases, the City engaged the consulting services of an economic firm, Keyser Marston and Associates (KMA). KMA prepared a study, entitled *Residential Nexus Analysis* (April 2010), to estimate and quantify the nexus between new residential development in Fremont and the new demand for affordable housing that would be caused by that new development. In addition to quantifying this nexus-impact fee, KMA also applied its understanding of urban housing economics and available econometric models to determine whether the City's existing 15% requirement and proposed 20% requirement were justified by the nexus study. Finally, the nexus study also analyzed how much it costs developers to comply with the City's 15% on-site requirement for purposes of determining an in-lieu fee amount.

The KMA nexus study is attached to this report as Informational "3." The nexus report contains economic facts, assumptions, and statistical techniques which support its internal analysis and conclusions. Of significance, the nexus study demonstrates a reasonable relationship between the City's current 15% affordable housing on-site production requirement and the need for affordable housing created by new residential construction. New residential construction generates a demand for affordable housing for the new workers required to fill the jobs created to satisfy the new home buyer's demands for goods and services that is at least equivalent to the current 15% requirement. The table at the middle of page 6 of the KMA report shows the different percentages computed using the report's assumptions. If the City were to set its fees based upon the nexus amounts, the range for those fees would be \$27 to \$38.50 per square foot; the highest fee is justified for rental housing. The KMA report also looked at fees as traditional "in-lieu" fees approximating the cost to the developer of providing the units on site in a for-sale project.

Since developers are already reserving affordable units on-site, they are already bearing a cost that approximates the impacts of the new development on affordable housing needs. The KMA report evaluated the on-site equivalent costs for each prototype studied. These amounts (all lower than the comparable nexus amounts) were used as the basis for the recommended in-lieu fee being presented to Council. The KMA report showed that in-lieu fees are justified ranging from a high of \$25.20 per

square foot for small lot single family residential to a low of \$19.60 per square foot for townhomes. Of course, these fees are justified by the nexus portion of the study because they are lower than the computed nexus amounts. The lowest of the on-site equivalent costs per square foot was used as the basis for recommending the fees in the draft resolution included with this report.

The proposed ordinance provides that in-lieu fees for for-sale housing, and the rental housing impact fees, are to be set by City Council resolution. Staff is proposing that the full \$19.50 per square foot (\$19.60 rounded down) in-lieu and impact fees that are justified by the KMA study be temporarily reduced as part of the Council's further stimulus efforts. Staff is recommending—consistent with the Council adopted 25% reduction in CBD impact fees—a 25% reduction of the initial fees to \$14.50 per square foot, with the fees to increase in equal increments of \$1.67 per year over three years until they return to their full basis of \$19.50. Staff anticipates reviewing the economic and factual support for the fee amounts and making additional recommendations to Council at the end of three years.

These proposed changes have been discussed at meetings involving developers (for-profit and nonprofit), housing advocates, and members of the public with interests in residential development and affordable housing over the course of several “stakeholders” meetings. The proposed revisions were reviewed by the Planning Commission on May 13, 2010, and bear the Planning Commission's recommendation that they be adopted.

DISCUSSION/ANALYSIS:

The following list of proposed changes attempt to implement the Council's direction and the majority interests of the stakeholders. Of these changes, two significant structural changes to the Inclusionary/Affordable Housing Ordinance include: (1) extending the use and availability to developers of an in-lieu fee alternative, and (2) changing rental unit requirements to conform the ordinance to the *Palmer* case holdings.

Zoning Ordinance Changes

Over the past three years, staff has conducted multiple outreach meetings with a stakeholders group represented by for-profit housing developers, non-profit housing developments, housing advocacy groups, and other interested individuals and groups. These stakeholder outreach meetings were forum-type discussions that were conducted to identify and resolve concerns with the City's Affordable Housing Ordinance. At the two most recent meetings (March 31 and April 16, 2010), staff presented the KMA nexus study, discussed the idea and magnitude of an in-lieu fee alternative to building units, and presented summaries of the more significant conceptual changes included in the proposed ordinance. Exhibit “B” provides the proposed draft ordinance. Informational “2” provides a summary table of the proposed ordinance changes. The primary substantive changes to the ordinance follow. In three cases, the Planning Commission recommended amendments to the staff recommendations. These amendments are underlined in bold to highlight as an option for Council consideration.

- *Definitions*
 - Redefines a Residential Project *from 7 or more units to 2 or more net units*, including a conforming change to the City's residential condominium conversion ordinance, as proposed by staff, *or*

- **(PC Amendment) Redefines a Residential Project *from 7 or more units to 5 or more units, including a conforming change to the City's residential condominium conversion ordinance, as proposed by Planning Commission.***
- *Administrative provisions*
 - Affordability terms:
 - Modifies affordability terms for rental projects *from 99 years to 55 years* effective immediately, and for for-sale projects *from 30 years to 45 years* effective January 1, 2013.
 - For-sale affordable units could be replaced with rental affordable units with rental affordability levels changed *from 9% very low and 6% low income to 6% very low, 4% low, and 5% moderate income* (to be consistent with the nexus study).
 - Unsold for-sale affordable units: Modifies 180-day sale provision to provide that a unit cannot be sold the difference between the market sales price and the affordable ownership cost or an amount equal to affordable housing fees for seven units, whichever is greater, would be deposited in the Affordable Housing Fund.
 - Renting for-sale units: Adds provision that in for-sale projects, units may be initially rented and later sold with specific provisions and relocation subsidy paid to displaced tenants consistent with that required for condominium conversions.
 - Fractional units: For fractional units, applicant may either construct additional unit or pay fraction of affordable fee.
 - Application and fee payment procedures.
 - The initial Residential Project application must be accompanied by an affordable housing plan that may be amended until a building permit is issued and may include off-site and other alternative.
- *Basic Requirement*
 - Retains basic requirement percentage of affordable units at 15% moderate income in for-sale projects (units individually sold).
 - Rental project receiving no City assistance or regulatory incentives pay an affordable housing impact fee; projects receiving City assistance or regulatory incentives provide affordable housing per the terms of that assistance.
- *Alternative options to basic requirement (for-sale projects only)*
 - Fee:
 - Establishes affordable housing fee. The proposed fees (to be adopted by Council resolution) are \$19.50 per square foot, discounted by 25% to \$14.50 for the first year. Fee to be increased gradually over three year period to \$19.50 per square foot. Fees not applicable to secondary or density bonus units.
 - For-sale units: Modifies the in-lieu fee provision availability *from only lots over 10,000 square feet to all lots.*
 - Rental units: No on-site affordable units would be required for rental units that are not assisted by the City; instead an impact fee will be required.
 - Off-site construction:
 - Modifies the off-site construction alternative *from units greater in size and number to 10% greater in number and in the same redevelopment area, Planning Area, Central Business District, or within ½-mile of an existing rail station; or*
 - **(PC Amendment) Modifies the alternative option of off-site construction if in the same redevelopment area, Planning Area, Central Business District, or 1-**

mile radius from an existing rail station and restricted as affordable units and removes the 10% penalty (which would maintain the standard requirement of 15% affordable units).

- Purchase of existing market rate units:
 - Adds the alternative option of purchasing existing market rate units if purchased units are 10% greater in number or more affordable and within same redevelopment area, Planning Area, Central Business District, or ½-mile radius from an existing rail station and restricted as affordable units, as proposed by staff, *or*
 - **(PC Amendment) Adds the alternative option of purchasing existing market rate units if purchased units within same redevelopment area, Planning Area, Central Business District, or 1-mile radius from an existing rail station and restricted as affordable units and removes the 10% “penalty” (which would maintain the standard requirement of 15% affordable units).**
- Property dedication:
 - Modifies the property dedication alternative option requiring dedicated property must be at least 10% greater in number or more affordable and, must be located within or contiguous to the project, and must be located within the same redevelopment area or provide equivalent redevelopment credit.
- Preservation of at-risk units:
 - Adds the alternative option of preserving existing affordable units at-risk of conversion to market rate units located within a redevelopment area or anywhere within the City. Units must be affordable to low and very low income households and affordability must be extended for 55 years for rentals and 45 years for for-sale units.
- *Affordable Housing Fund:*
 - Use of monies:
 - Specifies uses of and spending limitations applicable to the Affordable Housing Fund with a maximum of 10% for supportive services and 5% for City administration costs.

General Plan Conformity

Exhibit “C” provides that applicable General Plan policies and analysis demonstrating the proposed project’s General Plan conformity.

Council Initial Direction – Incorporation into Ordinance

As briefly outlined in the Background section, in July 2008, Council directed staff to make four general changes to the inclusionary/affordable housing ordinance. The proposed ordinance addresses this direction as follows:

- *Administrative Changes:* Eliminate provision that results in loss of affordable units if not sold after 180 days and make affordability restriction periods consistent with California Redevelopment Law (CRL).

Response: The draft ordinance states that if, within 180 days of an applicant trying to sell a unit it cannot be sold, the applicant would pay the City the difference between the fair market sales price and the affordable sale price or affordable housing fees for seven units, whichever is

greater. These monies would be deposited in the Affordable Housing Fund. The affordability restriction periods have been revised to be consistent with CRL, as 45 years for for-sale units and 55 years for rental units.

- *Use of In-lieu Fee:* Provide more opportunities for payment of in-lieu fees by more types of residential projects.
Response: The draft ordinance allows residential projects to pay an affordable housing fee instead of constructing the basic requirement of 15% affordable units on-site.
- *Percentage of Inclusionary/Affordable Units:* Increase the percentage of required inclusionary units over a five year period;
Response: The nexus study estimated inclusionary percentages (assuming where the *Palmer* including 15% for rental would not apply) and a range from 18.3% for Stacked Condos to 24.4% for Large Lot Single Family. Because the nexus study did not justify an across the board increase in the percentage of affordable units for all housing prototypes, increasing the basic requirement to more than 15% has not been incorporated into the draft ordinance. The nexus study did, however, justify the existing 15% basic requirement. Further, staff was concerned that current economic conditions would not support an increase in the basic requirement. As such, this requirement remains unchanged in the draft ordinance.
- *Transfer of Below Market Rate (affordable) units:* Allow affordable units to be transferred from one site to another site, but establish areas where units could be transferred to.
Response: The proposed ordinance provides a few alternative options for transferring the affordable units to another site. These alternatives included: purchase of existing market rate housing and restricting it at affordable rates as long as within the same redevelopment area or Planning Area; purchase of existing affordable units at-risk of converting to market rate as long as within the same redevelopment area or Planning Area; dedication of land for the future construction of affordable housing as long as within same redevelopment area; and allowing the off-site construction of the affordable units as long as within same redevelopment area or Planning Area.
- *Use of Affordable Housing Fund Monies:* Allow a portion of Affordable Housing Fund monies to be used for supportive services.
Response: The proposed ordinance allows up to 10% of the monies deposited in the Affordable Housing Fund to be used for supportive services.

Affordable Housing Fee

The KMA nexus study supports an affordable housing fee of \$19.60 per square foot (rounded to \$19.50). This fee amount is less than the demand created for affordable housing caused by the residential projects as indicated in the KMA study. Among the stakeholders, the fee level seemed to receive consensus support. However, some developers contend that the fee, even if reduced 25% to \$14.50 (as recommended), is too high given the current economics of residential development. Some developers state that the fee alternative, at the recommended reduced level, will discourage new housing projects in the City. One stakeholder participant commented that the City would know the fee is too high if no one builds.

Some nonprofit developers and housing advocates expressed that some money for affordable housing projects is better than none, and that the \$14.50 initial fee with the scheduled increases will create a sufficient fund to build affordable housing. Other housing advocates, on the other hand also expressed concern that the fee is insufficient and the temporary fee reduction, intended as an economic stimulus, would reduce affordable housing opportunities. Finally, some housing advocates are concerned that the nexus study emphasizes employee housing needs, but it does not address the many other people who need affordable housing (e.g., seniors, disabled) who are not included in the job pool.

There are obviously varying opinions on each side of the spectrum. In balancing these interests and desires, staff recommends that Council adopt the fee of \$14.50 per square foot (the lowest on-site equivalent rate - \$19.50 full basis - among the various prototypes studied by KMA, reduced 25%) for the first year to be increased gradually over three years to \$19.50 per square foot. This fee amount measures the costs of the 15% basic for-sale requirement to developers and is significantly less than the lowest fee justified by the nexus amount. A nonprofit housing producer has confirmed that the recommended fee is reasonably close to their costs to build affordable housing comparable to the housing that would be built under the on-site requirements in a hypothetical development project. The 25% reduction and the gradual increases in the fee are consistent with Council's previous economic stimulus measures, and with national evidence about a slowly recovering economy.

By using a "per square foot basis" the fee will be reasonably related to the housing needs generated by each particular residential project. Total fees will be greater for larger, and hence more expensive homes. This approach relates the fees collected to the objectives of meeting the affordable housing demands created by the project. Developers realize the economic benefits of their project, but also contribute towards the costs and societal impacts of their project without burdening the public as a whole with those impacts. As more evidence is gathered about how this program actually works it can be further adjusted if necessary.

Several developers have requested that the fee remain at \$14.50 per square foot throughout the initial three year period. However, there has been recent growth in the national gross domestic product (GDP) and the U.S. Federal Reserve Bank is presently unwinding of some of their credit support programs for housing and the large banks. In its April 14, 2010, *Summary of Commentary on Current Economic Conditions by Federal Reserve District* (the "beige book"), the Federal Reserve Board, included the following in its discussion regarding conditions in the San Francisco district,

"Housing demand ... appeared to be largely stable on net, while demand for commercial real estate continued to slide. The pace of home sales remained mixed across areas but appeared largely stable overall, while home prices edged up further in some parts of the District."

This Federal Reserve Board commentary, based on analyses by a legion of their staff economists using their access to the most current information in the nation, evidences a recovery, albeit weak. Further, staff confirmed with several developers and consultants that the local housing markets could take at least three years to recover from the latest recession. The proposed fee resolution (Exhibit "D") incorporates language that directs staff to re-evaluate the fee in three years to determine, based on economic conditions, the appropriate fee at that time. Subsequently, the fee will be evaluated every five years, consistent with the comprehensive impact fee update process. In the meantime, staff believes the

recommended approach offers the greatest balance to all the community interests given the evidence available on the state of the local economy.

Planning Commission Deliberation

On May 13, 2010, the Planning Commission conducted a public hearing on the proposed Zoning Text Amendment and recommended City Council approve the project with a few amendments, by a vote of 4-2-0-1.

Planning Commission's recommended amendments to the Affordable Housing Ordinance are as follows:

1. Redefine a *Residential Project* as that with "5 or more" units instead of staff's recommendation of "2 or more net new" units.
2. Modify the alternatives option for *Off-Site Construction/Purchase Existing Market Rate Units* to eliminate the requirement for "at least 10% greater than the number of inclusionary units otherwise required" (e.g., equal to the 15% basic requirement amount).
3. Further modify the *Off-Site Construction/Purchase Existing Market Rate Units* alternative option to expand the location to purchase an existing market rate unit for conversion to an affordable unit *from* "½-mile" *to* a "1-mile" radius of an existing rail transit station.

The Commission also debated staff's recommendations that the study-supported in-lieu fee of \$19.50 be reduced by 25% to \$14.50 for the first year followed by the fee being stepped-up over three years to the full amount. In particular, the Commission expressed their belief that the fee and inclusionary percentage requirements need to be reviewed within the initial three years. The Commission's discussion concluded with a majority (4-2-0-1) supporting the recommended ordinance subject to the three amendments listed above. The draft ordinance (Exhibit "B") shows both the Planning Commission's recommended amendments (above) and staff's initial recommendation. Staff requests that the Council determine which, if any, of the Commission's proposed amendments should be in the final adopted ordinance.

Additionally, the Commission considered but did not recommend that the fee be set at \$14.50 for a three year period (and not stepped up to \$19.50), at which time the fee and inclusionary percentage requirement would be re-evaluated. This option received a tie vote and was not recommended to the Council.

The draft Planning Commission minutes, summarizing speaker and commission comments and discussion on May 13, 2010, are attached as Informational Item "4."

FISCAL IMPACT:

Currently, projects that include single-family homes on large lots (i.e., 10,000+ square feet) have the option to satisfy their affordable housing production requirements by payment of an in-lieu fee that is deposited into the Inclusionary Housing In-Lieu Fund. The proposed ordinance would allow for-sale projects to pay in-lieu fees rather constructing moderate-income homes on site and would require the payment of rental impact fees by market-rate rental projects. The In-Lieu Fund would be

renamed the “Affordable Housing Fund,” both in-lieu fees and affordable housing impact fees would be placed in the fund.

Specific affordable housing programming activities will be developed as fee revenues are collected. The proposed ordinance provides for up to 10% of the fees to be used for affordable housing supportive services and up to 5% of the fees to be used for program administration costs.

The fiscal impacts may extend beyond the Affordable Housing Fund to other City funds such as the General Fund and the Redevelopment Agency Funds. Administrative services for the program will be paid from the 5% permitted under the ordinance, but the administrative costs could conceivably exceed revenues depending on the nature of the programming. Shortfalls could be paid for from the Redevelopment Agency’s low and moderate income housing fund.

Although fiscal impacts cannot be estimated until actual programs begin to take shape, these impacts are expected to be exceeded by the economic benefits of promoting balanced development in Fremont and by the economic and social benefits to the community of enhancing the City’s affordable housing programs. Many of these latter benefits are also discussed in the General Plan Housing Element.

ENVIRONMENTAL REVIEW:

An Initial Study (Informational Item 1) and Draft Negative Declaration (Exhibit “A”) have been prepared for this project in accordance with the California Environmental Quality Act. The environmental analysis did not identify any potential impacts. However, individual residential projects proposed in the future would be evaluated to identify and mitigate, if necessary, any potential environmental project-specific impacts.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. Because this project is applicable Citywide, a 1/8-page display advertisement was published by *The Tri-City Voice* on May 18, 2010. A second legal ad was published in the *Tri-City Voice* on May 25, 2010, in accordance with Government Code Sections 66017-66019 for adoption of impact fees. In addition, 26 public hearing notices were e-mailed as a courtesy to interested parties (e.g., for-profit developers, non-profit housing developers, housing advocacy groups) on May 21, 2010.

Further, a Notice of Intent to Adopt a Negative Declaration was published by *The Tri-City Voice* on April 30, 2010. The 20-day comment period on the draft Negative Declaration and Initial Study ran from May 7, 2010 to May 26, 2010. No comments were received on the draft Negative Declaration or the Initial Study (at the time this report was printed).

ENCLOSURES:

- [Exhibit A – Draft Negative Declaration](#)
- [Exhibit B – Draft Affordable Housing Ordinance](#)
- [Exhibit C – General Plan Conformity](#)
- [Exhibit D – Draft Fee Resolution \(adopting in-lieu fees and affordable housing impact fees\)](#)
- [Informational 1 – Initial Study](#)
- [Informational 2 – Table Comparing Existing and Proposed Modifications to Inclusionary/Affordable Housing Ordinance](#)

- [Informational 3 – Residential Nexus Analysis report dated April 2010 prepared by Keyser Marston and Associates](#)
- [Informational 4 – Draft Planning Commission Minutes from May 13, 2010](#)
- [Informational 5 – Correspondence](#)

RECOMMENDATION:

1. Hold public hearing.
2. Find that the Negative Declaration (Exhibit “A”) prepared for this project has been completed in compliance with the requirements of CEQA and reflects the independent judgment of the City, and that approval of this Zoning Text Amendment and setting of Affordable Housing In-lieu and Impact Fees will not have any significant impact on the environment.
3. Find that the Zoning Text Amendment and setting of Affordable Housing In-lieu and Impact Fees is in conformance with the relevant provisions contained in the City’s General Plan. These provisions include the goals, policies, and actions set forth in the General Plan’s Housing Chapter as enumerated in Exhibit “C.”
4. Find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment because the proposed Zoning Text Amendment and setting of Affordable Housing In-lieu and Impact Fees achieves City housing goals to provide opportunities for housing for all income groups, is consistent with State law, and provides for an economically balanced community as described in the Basis and Purposes section of the proposed ordinance (proposed FMC Title VIII, Chapter 2, Article 21.7, Section 8-22170, Basis and Purposes).
5. Select which, if any, of the following Commission proposed amendments to incorporate into the Affordable Housing Ordinance:
 - a. *Residential Project definition* (Section 8-22171(q))
 - i. Applicable to projects with 2 or more net new units or lots, **or**
 - ii. Applicable to projects with 5 or more units or lots.
 - b. *Off-Site Construction* (Section 8-22177(b)(1)) *and Purchase of Existing Market Rate Units Requirement* (Section 8-22177(d)(1))
 - i. Units to be converted shall be at least 10% greater in number or provide greater affordability, **or**
 - ii. Units to be converted shall be equivalent to the number resulting from 15% basic requirement.
 - c. *Off-Site Construction* (Section 8-22177(b)(2)(b)) *and Purchase of Existing Market Rate Units Locational Criteria* (Section 8-22177(d)(3)(B))
 - i. If not located within a redevelopment area, units to be converted shall either be located within the same Planning Area, the Central Business District, or within 1/2-mile of an existing rail station, **or**
 - ii. If not located within a redevelopment area, units to be converted shall either be located within the same Planning Area, the Central Business District, or within 1-mile of an existing rail station.
6. Waive full reading and introduce an Ordinance amending Fremont Municipal Code Title VIII, Chapter 2, by deleting Article 21.7, Inclusionary Housing Ordinance in its entirety, and replacing it with the provisions set forth in Exhibit “B,” Affordable Housing Ordinance.
7. Direct the City Clerk to prepare and publish a summary of this ordinance.

8. Adopt the resolution as depicted in Exhibit “D” to set the Affordable Housing Fee at \$19.50 per square foot, discounted 25% to \$14.50 for the first year of implementation increasing over the initial three year period to \$19.50 to be effective as of July 1, 2013.
9. Rename the City’s “Inclusionary Housing In-Lieu Fund” as the “Affordable Housing Fund,” and direct staff to account for the receipt and use of all affordable housing in-lieu fees and affordable housing impact fees separately within the fund.

6.1 Report Out from Closed Session of Any Final Action

7.1 AWARD OF TOW SERVICE AGREEMENTS

Award of Tow Service Agreements to Central Towing, All Ways Towing and Transport, and Jack James Towing

Contact Person:

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Executive Summary: The Police Department released a Request for Proposals (RFP) for vehicle tow services earlier this year. The existing contracts were due to expire April 2010 and have been extended on a month-to-month basis since then. For the first time, seven towing companies responded to the Police Department's tow services RFP. Historically over the past several contracts, the City has had only three qualified towing companies apply, which conformed to the three zones the City polices. A team of four traffic officers with over thirty years of traffic enforcement experience formed the review and recommendation committee. Criteria from the RFP requirements, police services, and the public's perspective were all included in the dimensions measured to select the top three tow service companies. Site visits were conducted by all four officers and all of the City's policies and procedures were adhered to and followed. The selection committee analyzed each tow company's ability to perform tow services for the Police Department and service community members whose vehicles had been stored at the direction of the Police Department.

The top three towing companies recommended are: (1) All Ways Towing, with their office and storage yard at 42700 Boyce Road, Fremont, CA, 94538; (2) Jack James Towing, with their office and storage yard at 42800 Boyce Road, Fremont, CA, 94538; and (3) Central Towing, with their office and storage yard at 36849 San Pedro Drive, Fremont, CA, 94536. The term of each contract is for one year with two additional one year options.

BACKGROUND:

In the mid 1990s, the Police Department divided the City into three police patrol zones based on calls for service, geographical barriers, and defined neighborhoods in order to improve police response times to calls for service and to facilitate the Department's philosophy of Community Policing. During this change from six sectors to three zones, the tow contract areas were changed, as well. Staff found that having tow companies assigned to a specific zone quickened response times for tows and improved performance. Tow companies developed a sense of ownership of their assigned zones, which in turn provided the Police Department and the public with improved service. Having a tow company responsible for each zone in the City also made it easier for Police dispatchers to request tows from the tow company assigned to that zone.

Tow company response times are critical for the Police Department to function efficiently. When a tow request is made, an officer or Community Service Officer (CSO) must remain on scene waiting for the tow truck to arrive. While waiting for the tow truck, the officers and CSOs are out of service and not

available to respond to calls for service. Staff has found that three tow companies for the City provide the appropriate service levels for the Police Department.

The response this year to the towing RFP was atypical. For the first time, seven tow service providers applied for three tow zones. In the past, the RFP minimum requirements were sufficient to qualify the tow companies for the contract because generally only three tow companies were viable bidders. This year, in addition to the three existing tow companies, four new companies submitted proposals. All of the applicants qualified based on the minimum standards set forth in the RFP.

As a result of so many bidders this year, an evaluation committee was assembled from the Traffic Division that included the Traffic Lieutenant (Project Manager), two Traffic Sergeants, and the Commercial Traffic Officer. The selection team has a combined eighty-five years of law enforcement experience and over thirty years of traffic enforcement experience. The Traffic Division historically has management responsibilities over the towing contractual agreements. The committee was tasked with conducting site visits, background checks, and assessing the information.

To assist in the task of determining each company's qualifications and capacity to perform police tows, the committee developed a matrix of assessment criteria. The criteria drew from the RFP requirements and the committee's expertise in the field of traffic enforcement and towing issues, and were formulated from the business perspective of obtaining the best value for the service needs of the Police Department, as well as the community, when it comes to towing and releasing vehicles impounded or stored at the request of the Police Department. To assure that the City received the best value, the criteria gave both previous tow vendors and new vendors equal opportunity to compete based on their ability to provide services to the Police Department and the community.

After developing the criteria, the committee conducted site visits at each vendor's location. The committee completed the site visits on March 30, 2010. Staff assessed the vendors based on the criteria and ranked them in descending order, as listed below. The top three companies include two companies with expiring contracts from the last tow service RFP, All Ways Towing and Central Towing, and a new company Jack James Towing.

1. All Ways Towing
2. Jack James Towing
3. Central Towing
4. City Towing
5. Mission Pass Towing
6. Pro Star Towing
7. AM PM Towing

The results were posted and the seven tow companies were notified. The top three tow companies (All Ways Towing, Jack James Towing, and Central Towing) were sent letters inviting them to participate in the contractual agreement. All Ways Towing and Central Towing are existing tow companies under the current contract. The new tow operator, Jack James Towing, will perform tows in the zone previously serviced by Mission Pass Towing. The objective in awarding the contract is to assure that the City has the most capable tow service providers to service the Police Department's needs, as well as meeting the

needs of the community when it comes to towing and releasing vehicles impounded or stored by the Police Department.

DISCUSSION/ANALYSIS: Staff recommends that the City Council authorize negotiations and contract execution for tow services with the top three companies listed above for the following reasons:

1. Each tow company has space to store in excess of 100 cars. Each tow company's storage yards are built on concrete or asphalt or a combination of concrete and asphalt pads. This makes for ease of capture and containment of fluids leaking from stored vehicles.
2. Each tow company has a large and fully secured evidence storage area with enough space to securely store a minimum of three vehicles.
3. Each tow company has identified and segregated off street parking for customers that will accommodate customer vehicles. All three tow companies have a front office visible and accessible from the street for the conduct of business.
4. All three successful bidders have an appropriate number of tow trucks, including light duty, medium duty, and heavy duty tow trucks. All three tow companies' trucks are newer models in good mechanical condition, clean, and have appropriately painted schemes and business lettering.
5. All three tow companies have a larger number of qualified and appropriately licensed drivers than any of the other bidders. The three successful bidders each have between 10 and 38 drivers.
6. The three successful bidders all passed background and reference checks. These consisted of contacting other law enforcement agencies for which the successful bidders tow, and nothing was found in the reference checks that would disqualify any of them from being awarded the contract.
7. The successful bidders all presented professional appearing and easily understood RFP response documents.
8. All three of the successful bidders have full service offices as well as significantly large storage yards located within the City limits of Fremont.

The evaluation process revealed that overall the top three tow operators have more resources, better equipment, more storage space, secured evidence storage, more drivers, and are in the best position to perform the work required by the Police Department.

PROTESTS:

Mission Pass Towing: Mission Pass Towing, which qualified in the past for one of the three tow zones when only three responsive businesses applied under the previous RFPs, did not qualify in the top three in this year's RFP. Mission Pass Towing objects to the findings of the selection committee, and in particular takes issue with the criteria and rating system used to assess the bidders. Mission Pass Towing believes it should have received the maximum score in twenty-four of the twenty-five categories that the evaluation team used to assess the vendors and make recommendations.

The recommended tow companies have better evidence storage capacity and security than does Mission Pass Towing. Each of the three recommended tow companies have larger storage areas that can hold more vehicles, and each has a storage lot that will hold over 100 vehicles that can be stored in a fashion that allows easy access to each vehicle stored. Unlike Mission Pass Towing, which has a mostly dirt and rock storage area, each of the recommended tow companies has concrete/asphalt storage pads that facilitate protecting the environment, ease of containment, and removing fluids leaking from stored vehicles.

The tow operators with which the City contracts represent the Police Department in the community before and after a police tow is completed. A vehicle owner's experience in interacting with a tow company is therefore an important consideration. The three recommended vendors each has a greater number of off-street customer parking spaces and offices that are easy for customers to locate. The age, appearance, and mechanical operation of the entire fleet of tow vehicles of each successful vendor are much better than that of Mission Pass Towing. Each recommended vendor has a larger number of qualified and certified drivers than does Mission Pass Towing.

Pro Star Towing: After receiving notification that the company was not being recommended for award, Pro Star Towing, Inc., sent a letter to the Finance Department objecting to the Police Department's use of assigned tow zones, preferring a rotational towing system, instead. Pro Star's letter also insinuated that City staff had promised award of a tow contract to Jack James Towing before the RFP was issued.

One of the core purposes of the City's Purchasing Code is to guard against favoritism, fraud, corruption and conflict of interest. (FMC Section 2-9102(a)(3).) Accordingly, when an allegation such as Pro Star's is made, staff takes the claim seriously. In this instance, the City Attorney's Office hired an independent investigator to look into the matter. The investigator concluded that there was no credible evidence that any City employee had engaged in any sort of misconduct.

With regard to Pro Star's complaint against assigned tow zones and desire for a rotational tow system the Police Department does not use a rotational towing system for the following reasons:

1. Response times are slower in a rotational system. With zone towing the vendor responsible for the zone understands it is required to have staff and equipment available to handle a tow when called by the Police Department. In a rotational towing model, it is often the case that a tow vendor, when busy with other tows, will "pass" on a tow call from the Police Department, knowing the Department can call the next vendor on the list. With rotational towing, the Department could request a tow at one end of the City and the towing service provider next up in rotation is based at the other end of the City. Every minute an officer or CSO waits for a tow truck, that officer or CSO cannot answer calls for service.
2. The RFP was clear the City is interested in and seeking bids for zone towing only.
3. Calling a tow truck on a rotational system is problematic for Police dispatchers. Using the rotational system, dispatchers would need to keep track of who was called last and if the tow company responded and then make sure the next tow operator on the list is called. With more than one dispatcher making these requests, a rotational system would be extremely difficult to administer.

FISCAL IMPACT: There is no fiscal impact to the City from entering into these contracts for towing services. All towing and storage fees are paid by the owners of the towed vehicles. The rates for towing and storage are set by the City to conform with rates charged by the Hayward/Dublin offices of the California Highway Patrol (CHP).

ENVIRONMENTAL REVIEW: None required.

ENCLOSURES:

- [Exhibit 1: Letter from Mission Pass Towing and Supplemental to Appeal](#)
- [Exhibit 2: Letter From Pro Star Towing](#)
- [Exhibit 3: All Ways Towing Overhead Photo](#)
- [Exhibit 4: All Ways Towing Street View Photo](#)
- [Exhibit 5: Jack James Towing Overhead Photo](#)
- [Exhibit 6: Jack James Towing Street View Photo](#)
- [Exhibit 7: Central Towing Overhead Photo](#)
- [Exhibit 8: Central Towing Street View Photo](#)
- [Exhibit 9: Mission Pass Towing Overhead Photo](#)
- [Exhibit 10: Mission Pass Towing Street View Photo](#)

RECOMMENDATION:

Authorize the City Manager or designee to negotiate and execute tow services contracts for a three-year term with All Ways Towing, Jack James Towing and Central Towing.

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC.....	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF.....	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
June 8, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 15, 2010	5:00 p.m. (tentative)	Work Session	Council Chambers	Live
June 22, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 29, 2010 (5 th Tuesday)		No City Council Meeting		
July 6, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 13, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 20, 2010	TBD	Work Session	Council Chambers	Live
July 27, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
		August Recess		
September 7, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 14, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 21, 2010	TBD	Work Session	Council Chambers	Live
September 28, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 5, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 12, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 19, 2010	TBD	Work Session	Council Chambers	Live
October 26, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live